SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 559

HANS PETE MORTENSEN AND LORRAINE MORTENSEN, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 11, 1944.

[fol. a] [Caption omitted]

[fol. 1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA, GRAND ISLAND DIVISION

No. 357

Criminal Case

UNITED STATES OF AMERICA, Plaintiff,

vs.

HANS PETE MORTENSEN and LORRAINE MORTENSEN, Defendants

INDICTMENT (VIOLATION OF SECTION 398, TITLE 18, UNITED STATES CODE)—Filed January 28, 1941

The grand jurors of the United States of America, drawn from the territory comprising the Omaha, Norfolk, Chadron, Grand Island, and North Platte Divisions of the District of Nebraska, and sitting in the Omaha Division of said District in the term beginning September 23, 1940, being first duly impanelled, sworn, and charged by said Court to inquire within and for said Divisions, upon their oaths do present and say:

That Hans Pete Mortensen and Lorraine Mortensen, on September 4, 1940, did unlawfully, wilfully, knowingly, and feloniously transport and cause to be transported, and aid and assist in obtaining transportation for and in trans-[fol. 2] porting, in interstate commerce from the City of Salt Lake City, in the State of Utah, to the City of Grand Island, in Hall County, in the Grand Island Division of the District of Nebraska, circuit aforesaid, and within the jurisdiction of this Court, a certain girl, to-wit, one Margaret Smith, for the purpose of prostitution and debauchery, and with the intent and purpose to induce, entice, and compel said girl to give herself up to debauchery and to engage in immoral practices; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Second Count

And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that the said Hans Pete Mortensen and Lorraine Mortensen, on September 4, 1940, did unlawfully, wilfully, knowingly, and feloniously transport and cause to be transported, and aid and assist in obtaining transportation for and in transporting, in interstate commerce from the City of Salt Lake City, in the State of Utah, to the City of Grand Island, in Hall County, in the Grand Island Division of the District of Nebraska, circuit aforesaid, and within the jurisdiction of this Court, a certain girl, to-wit, one Doris McMahon alias Goldie Wright, for the purpose of prostitution and debauchery, and with the intent and purpose to induce, entice, and compel said girl to give herself up to debauchery and to engage in immoral practices; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America (18 U. S. C. 398).

Emmet L. Murphy, Assistant United States Attorney for the District of Nebraska.

IN UNITED STATES DISTRICT COURT

WAIVER OF READING OF INDICTMENT AND PLEA OF NOT GUILTY —February 4, 1941

Case called for trial. Plaintiff represented by Emmet L. Murphy, Ass't U. S. Attorney. Defendants represented by Thomas W. Lanigan and Wm. P. Mullen.

[fol. 3] Defendants in court with their counsel waive reading of the indictment and plead not guilty.

It Is Ordered that case be set for trial at 10:00 A. M., May 19, 1941.

IN UNITED STATES DISTRICT COURT

PLEA OF DEFENDANTS IN ABATEMENT AND MOTION TO QUASH— Filed March 3, 1941

Come now the defendants and respectfully ask the Court to quash the indictment in this case and abate the proceedings for the following reasons, to-wit:

I

That the true facts in the case which were in the knowledge and possession of the Government officials, who are prosecuting the case, at the time the indictment was returned, do not constitute transportation in interstate commerce within the meaning of Section 398 Title 18 U. S. C., or any other Federal act relating to the White Slave Traffic.

II

The indictment does not reflect the facts and information furnished to the Government agents investigating the case prior to, at the time of, and subsequent to the filing of the complaint and indictment in this case, by the said Margaret Smith and Doris McMahon, alias Goldie Wright, named in the two counts of the indictment as victims, and who testified as chief Government witnesses before the grand jury which returned the indictment.

III

That there exists a material and fatal variance between the facts in the possession of the Government officials investigating the case and known at the time of the return of the indictment and the charges as set forth in the indictment.

IV

That in the event of a trial the evidence on the part of the Government will show a fatal and material variance between the charges as laid in the indictment, which vari- [fol. 4] ance will either result in a directed verdict or be fatal to any verdict of guilty which might be returned.

V

Had the indictment actually set forth the true facts in the possession of the Government, and which will be testified to at the trial by the Government witnesses who testified before the grand jury, it would have charged no violation of Section 398 Title 18 U. S. C., or any other Federal Statute relating to White Slave Traffic, and it would be a waste of Government time, effort and money to call a jury when the evidence that would be brought out at the trial would likely result either in a directed verdict on the Government's testimony, or a verdict which must be set aside.

VI

That the indictment as filed in this case seems to be an attempt to pervert and circumvent the spirit and letter of the acts of Congress relating to White Slave Traffic in that the Government officials who are prosecuting the case were informed of the facts hereinbefore set forth in paragraph eight hereof, prior to the filing of the complaint and the returning of the indictment herein, which facts do not constitute a transportation in interstate commerce within the meaning of Section 398 Title 18 U. S. C., but on the contrary disclose a legal and legitimate transportation, purpose and intent.

VII

That if the Government failed to properly instruct the grand jury as to the law and present to the grand jury the facts which were in its knowledge and possession at the time said matter was under consideration, and which facts were within the knowledge of the witnesses who appeared before the grand jury and which facts as made known to the grand jury would have prevented it returning of a true and valid bill in this case, then the said indictment was returned under a mistake of fact and law and is irregular and void and should be quashed.

VIII

That the defendants are reliably informed that the Government agents in charge of this prosecution prior to, at [fol. 5] the time of, and subsequent to the filing of the complaint and indictment in this case, were informed as follows: That the defendants are husband and wife and reside at Grand Island, Nebraska, and have been such residents for more than two years last past; that in August 1940 defendants were contemplating a summer vacation circle trip from Grand Island through several western states and to return to their home in Grand Island when they had finished their vacation and sight-seeing; that Margaret Smith and Doris McMahon, alias Goldie Wright, named in the first and second count of the indictment, were residents of Grand Island, Nebraska, and proposed to the defendants that they accompany defendants on the vacation trip to the mountains and pay their own expenses; that the defendants agreed to this arrangement and the two girls named in the indictment accompanied the defendants on the vacation circle trip and

paid their own expenses; that on or about the 22nd day of August, 1940, the defendants and the two girls named in the indictment left Grand Island proceeding through Wyoming, Utah and Montana and returning several days later by way of Colorado to Grand Island; that no immoral acts were committed by any of the parties on the trip and that the only intent and purpose was for a vacation with no intent to violate Section 398 Title 18 U. S. C., or any other Federal Statute, for the purpose of prostitution or debauchery or with the intent or purpose to induce, entice and compel said girls to give themselves up to debauchery or to engage in immoral practices, all of which was well known to the Government officials in charge of the prosecution at the time of the returning of the indictment, and said facts do not constitute transportation in interstate commerce within the meaning of the act.

Wherefore, the defendants pray that the Court order the notes and minutes of the grand jury to be brought into court and that the Court order the witnesses appearing before the grand jury or any other witnesses the court may deem proper, to appear and testify, and to permit defendants to produce oral testimony to support the matter set out in this motion; that if upon a hearing on the motion the allegations are true and supported by the evidence [fol. 6] produced, the court quash the indictment filed herein and abate the proceedings.

Hans Pete Mortensen. Lorraine Mortensen.

Duly sworn to by Hans Pete Mortensen and Lorraine Mortensen. Jurat omitted in printing.

In United States District Court

Demurrer of Plaintiff to Plea of Defendants in Abatement and Motion to Quash—Filed March 17, 1941

Comes now the United States of America and demurs to the Plea in Abatement and Motion to Quash of Defendants filed herein, for the following reasons and upon the following grounds:

1. That the Court has no jurisdiction to hear or determine such Plea and Motion filed after entry of plea to the general issue.

2. That the Court has no jurisdiction over the subject matter of said Plea and Motion.

3. That there is an improper joinder in said Plea and Motion in one pleading.

[fol. 7] 4. That said Plea and Motion do not contain or state facts sufficient to constitute any basis for any action by the Court.

United States of America, Plaintiff, by Emmet L. Murphy, Assistant United States Attorney.

In United States District Court

Motion of Defendants to Withdraw Plea of Not Guilty—Filed March 27, 1941

Come now the defendants and respectfully move the court to permit them to withdraw their plea of not guilty entered herein on the 4th day of February, 1941, for the purpose of presenting a plea in abatement heretofore filed in said action, and a motion to direct plaintiff to bring into court a transcript of the testimony taken before the grand jury, if one was made, or a synopsis of said testimony, if a complete transcript was not made, and for permission to file an offer of proof of the facts.

Hans Pete Mortensen, Lorraine Mortensen, Defendants.

In United States District Court

Offer of Defendants to Produce Facts by Oral Testimony —Filed March 27, 1941

Come now the defendants and respectfully offer to prove by oral evidence the following facts, and that said facts were made known to the Government officials in charge of presenting the evidence to the Grand Jury at the time of the returning of the indictment in this case, and in charge of the prosecution of said case, to-wit:

That the defendants are husband and wife, and reside at Grand Island, Nebraska, and have been such residents for more than two years last past; that in August 1940 defendants were contemplating a summer vacation circle

trip from Grand Island through several western states, and to return to their home in Grand Island when they have [fol. 8] finished their vacation and sight seeing; that Margaret Smith and Doris McMahon, alias Goldie Wright, named in the first and second count of the indictment, were residents of Grand Island, Nebraska, and proposed to the defendants that they accompany defendants on the vacation trip to the mountains and pay their own expenses; that the defendants agreed to this arrangement, and the two girls named in this indictment, accompanied the defendants on the vacation circle trip and paid their own expenses; that on or about the 22nd day of August, 1940, the defendants and the two girls named in the indictment, left Grand Island proceeding through Wyoming, Utah and Montana, and returning several days later by way of Colorado to Grand Island; that no immoral acts were committed by any of the parties on the trip, and that the only intent and purpose was for a vacation with no intent to violate Section 398, Title 18, U. S. C., or any other Federal Statute, for the purpose of prostitution or debauchery, or with the intent or purpose to induce, entice and compel said girls to give themselves up to debauchery or to engage in immoral practices.

Hans Pete Mortensen, Lorraine Mortensen, Defendants.

Duly sworn to by Hans Pete Mortensen and Lorraine Mortensen. Jurat omitted in printing.

[fol. 9] In United States District Court

Motion of Defendants to Produce Testimony Presented to Grand Jury—Filed March 27, 1941

Come now the defendants herein and respectfully ask the court to direct the plaintiff to bring into court a complete transcript of the testimony presented to the grand jury upon which the indictment in the case is predicated, or a synopsis of said testimony in the event a complete transcript was not made.

Hans Pete Mortensen. Lorraine Mortensen.

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANTS TO QUASH—Filed April 11, 1941

Come now the defendants and respectfully make known to the court as follows:

1. That there is no evidence whatever presented to the grand jury to sustain the charge in the indictment.

2. That there was no competent evidence of the offense charged presented to the grand jury.

3. That the offense charged is contrary to the evidence produced before the grand jury.

4. That if the indictment set forth the facts presented to the grand jury the indictment would not state a cause of action.

5. That the indictment was returned under a mistake of law and fact.

6. That heretofore the defendants have filed in this case a offer of proof of the facts and it hereby renews that offer of proof by oral witnesses to sustain this motion to quash.

Wherefore, defendants pray that upon a hearing of the evidence to support this motion the court will sustain this motion to quash.

Lorraine Mortensen, Hans Pete Mortensen, Defendants.

[fol. 10] IN UNITED STATES DISTRICT COURT

ANSWER OF PLAINTIFF TO PLEA OF DEFENDANTS IN ABATEMENT AND MOTIONS TO QUASH—Filed April 16, 1941

Comes now plaintiff, United States of America, by Joseph T. Votava, United States Attorney for the District of Nebraska, and Emmet L. Murphy, Assistant United States Attorney, and for its answer to the plea in abatement and motion to quash and to the substituted motion to quash, alleges and states;

1. It repeats and makes a part hereof the allegations contained in its demurrer heretofore filed herein, and alleges that

(a) The Court has no jurisdiction to hear or determine such Plea and Motions filed after entry of plea to the general issue.

(b) The Court has no jurisdiction over the subject matter of said Plea and Motions.

(c) There is an improper joinder in said Plea and Motion in one pleading.

(d) Said Plea and Motions do not contain or state facts sufficient to constitute any basis for any action by the Court.

2. Further answering Plaintiff denies each and singular every allegation contained in said Plea in Abatement and Motions to Quash.

Wherefore plaintiff prays that said Plea in Abatement and Motions to Quash be overruled and dismissed.

United States of America, Plaintiff, by Joseph T. Votava, United States Attorney, and Emmet L. Murphy, Assistant United States Attorney.

Duly sworn to by Emmet L. Murphy. Jurat omitted in printing.

[fol. 11] IN UNITED STATES DISTRICT COURT

RECORD OF HEARING OF APRIL 16, 1941; DEFENDANTS GIVEN LEAVE TO WITHDRAW PLEAS OF NOT GUILTY; DEMURRER OF PLAINTIFF TO PLEA IN ABATEMENT OVERRULED; MOTION OF DEFENDANTS TO REQUIRE PLAINTIFF TO PRODUCE TESTIMONY BEFORE GRAND JURY OVERRULED; PLEA IN ABATEMENT OF DEFENDANTS AND MOTION TO QUASH THE INDICTMENT OVERRULED; PLEAS OF NOT GUILTY BY DEFENDANTS

Cause called for hearing upon motions and pleas on file. Plaintiff, United States of America, represented by Assistant United States Attorney Emmet L. Murphy, Defendants, Hans Pete Mortensen and Lorraine Mortensen, represented by their attorneys, Thos. Lanigan and Wm. P. Mullen.

Defendants given leave to withdraw their separate pleas of "not guilty". Demurrer to plea in abatement submitted and overruled, with leave to plaintiff to file answer instanter to said plea. Plaintiff given leave to file answer instanter to motion to quash indictment. [plea] in abatement and

motion to quash submitted upon the pleas, motion, answers and evidence given by witnesses offered by defendants. Witness Margaret Smith, sworn in and testimony presented to the court by Defendants attorney. Defendants motion to require plaintiff to produce a transcript or synopsis of testimony before Grand Jury overruled and exception granted. The plea in abatement of defendants, and their motion to quash the indictment are overruled and exceptions allowed.

Defendants are present in Court with their attorneys and each of the defendants states that he or she knows the na-
[fol. 12] ture of the charge in the indictment, and waives reading of the indictment and each pleads "not guilty".

The prior order setting case for trial on May 19th, is set aside.

In United States District Court

Order of January 13, 1943, Denying Application to Review Ruling on Plea in Abatement, etc.—Filed February 27, 1943

Now on this 11th day of January, 1943, prior to the calling of the above entitled case for trial, Thomas W. Lanigan, one of the attorneys for the defendants, appeared before the Court in Chambers and advised that there was pending in this cause a Plea in Abatement, Motion to Quash, Offer to Produce Facts by Oral Testimony and Motion to Produce Testimony presented by the Grand Jury; that said matters should be disposed of before entering the trial of the cause; that upon inquiry, Mr. Lanigan intimated that the matter had not been fully passed upon by Judge Munger, who had formerly presided in the preliminary proceedings in this case; that the Court thereupon advised counsel that he would make an investigation of the record and determine whether the matters had been disposed of; that on the morning of the 13th, before calling the case to trial, and after having examined the record, the Court advised the said Thomas W. Lanigan, and ordered that the orders of Judge Munger would not be disturbed by the Court.

J. A. Donohoe, United States District Judge.

IN UNITED STATES DISTRICT COURT.

JURY IMPANELLED; TRIAL, JANUARY 13, 1943

At 10:10 o'clock, A. M. case called for trial.

Defendants Hans Pete Mortensen and Lorraine Mortensen present in court personally and represented by Thomas W. Lanigan and William P. Mullen as counsel. Jury impaneled and sworn. Opening statements of counsel. Evidence on behalf of the government heard in part. At 4:04 o'clock, P. M. cause adjourned until Thursday morning, January 14, 1943, at 9:30 o'clock, A. M.

[fol. 13] IN UNITED STATES DISTRICT COURT

TRIAL, JANUARY 14, 1943; VERDICTS

At 9:55 A. M., trial proceeds.

Defendants present and by counsel, jury present. Evidence on behalf of government concluded. Evidence on behalf of defendants concluded. Arguments of counsel, instructions of the court, and at 2:20 o'clock, P. M. jury retire for deliberation in charge of a sworn officer of the court. At 3:55 o'clock, P. M. jury return into open court with separate verdicts as to each defendant, finding said defendants "guilty" on Counts Nos. 1 and 2, as charged in the indictment. Jury discharged from further consideration of the case. Defendants remanded to the custody of the United States Marshal.

IN UNITED STATES DISTRICT COURT

VERDICT AS TO DEFENDANT, HANS PETE MORTENSEN.—Filed January 14, 1943

We, The Jury, duly empaneled and sworn to try the issues joined in the above entitled cause, do find the said defendant: Hans Pete Mortensen

guilty as to the First Count,
guilty as to the Second Count,

in manner and form as charged in the Indictment therein.

s/C. S. HOEKSTRA, Foreman.

IN UNITED STATES DISTRICT COURT

VERDICT AS TO DEFENDANT, LORRAINE MORTENSEN.—Filed January 14, 1943

We, The Jury, duly empaneled and sworn to try the issues joined in the above entitled cause, do find the said defendant: Lorraine Mortensen

guilty as to the First Count,
guilty as to the Second Count,

in manner and form as charged in the Indictment therein.

s/C. S. HOEKSTRA, Foreman.

[fol. 14] IN UNITED STATES DISTRICT COURT

INSTRUCTIONS No. 1 OFFERED BY DEFENDANT.—Filed Jan. 14, 1943

If you find from the evidence that the vacation trip in question commenced at Grand Island, Nebraska and that the final destination was Grand Island, Nebraska, and that the states of Colorado, Wyoming, and Utah, were incidentally gone through, you are instructed that the White Slave Traffic Act specifically provides that the words "interstate commerce", as used in the act shall "include transportation from one state * * * to another state". This definition necessarily excludes, by implication, transportation from one point in a state to the same point within the same state and if you so find them you shall bring in a verdict of not guilty as to both Defendants on each count of the indictment.

U. S. vs. Wilson 266 Fed. 712.

Refused Ex
J. A. D.

In United States District Court

Judgment and Commitment as to Defendant, Hans Pete Mortensen—Filed January 15, 1943

On this 15th day of January, 1943, came the United States Attorney, and the defendant Hans Pete Mortensen appearing in proper person, and represented by Thomas W. Lanigan and William P. Mullen, as counsel, and,

The defendant having been convicted on a verdict of Guilty of the offenses charged in the indictment in the above-entitled cause, to wit:

Transporting a woman in interstate commerce for the purpose of debauchery and immoral practices, as charged in Count No. 1 of the indictment, and Transporting a woman in interstate commerce for the purpose of debauchery and immoral practices, as charged in Count No. 2 of the indictment,

and the defendant having been now asked whether he has anything to say why judgment should not be pronounced [fol. 15] against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court

Ordered And Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative who shall designate the place or places where said sentence shall be served, for the period of Three (3) years on Count No. 1 of the indictment, and for a like period of Three (3) years on Count No. 2 of the indictment, said periods of time to run concurrently and not consecutively; and it is further ordered and adjudged by the Court that said defendant shall pay a fine in the sum of Five Hundred Dollars ($500.00) on Count No. 1 of the indictment, and a further sum of Five Hundred Dollars ($500.00) on Count No. 2 of the indictment, and that said defendant be further imprisoned until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

J. A. Donohoe, United States District Judge.

In United States District Court

Judgment and Commitment as to Defendant, Lorraine Mortensen.—Filed January 15, 1943

On this 15th day of January, 1943, came the United States Attorney, and the defendant Lorraine Mortensen appearing in proper person, and represented by Thomas W. Lanigan and William P. Mullen, as counsel, and,

The defendant having been convicted on a verdict of Guilty of the offenses charged in the indictment in the above-entitled cause, to wit:

Transporting a woman in interstate commerce for the purpose of debauchery and immoral practices, as charged in Count No. 1 of the indictment, and Transporting a woman in interstate commerce for the purpose of debauch-
[fol. 16] ery and immoral practices, as charged in Count No. 2 of the indictment,

and the defendant having been now asked whether she has anything to say why judgment should not be pronounced against her, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court

Ordered And Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative who shall designate the place or places where said sentence shall be served, for the period of Three (3) years on Count No. 1 of the indictment, and for a like period of Three (3) years on Count No. 2 of the indictment, said periods of time to run concurrently and not consecutively, and that said defendant be further imprisoned until said defendant is otherwise discharged as provided by law.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

J. A. Donohoe, United States District Judge.

In United States District Court

Motion of Defendants for New Trial—Filed January 15, 1943

Come now the defendants and each thereof individually and asks for a new trial herein and as reasons and grounds therefore shows to the Court:

1. That there was irregularity in the proceedings of the Court prejudicial to the rights of the defendants as follows to-wit: the Prosecuting Attorney was permitted by the Court over the objections of the defendants to state in his opening statement that "he would prove certain facts", that said facts if proven, would constitute a violation of Section 28-919 of the Compiled Statutes of Nebraska for 1929, which statement was made for the sole purpose of prejudicing the Jury against the defendants on trial and which statement constituted fatal, prejudicial and reversable error and which evidence would be immaterial and was wholly unnecessary to prove the charges as laid in the indictment.

[fol. 17]

2. That there was irregularity in the proceedings of the Court prejudicial to the rights of the defendants as follows to-wit: that the Prosecuting Attorney and the witnesses for the Government, prejudicial to the rights of the defendants, over the objections of the defendants, as follows: to-wit: That the Prosecuting Attorney elicited from the witnesses, Doris McMahon, alias Goldie Wright, Margaret Smith, James L. Flood, and Lurline Allisson evidence, that defendants had committed a misdemeanor under the laws of the State of Nebraska, which would constitute a misdemeanor and violation of Section 28-919, of the Compiled Statutes of Nebraska for 1929 for the sole purpose of prejudicing the Jury against the defendants on trial and the introduction of such evidence constituting fatal, prejudicial, and reversable error and which evidence was immaterial and was wholly unnecessary to prove the charges as laid in the indictment.

3. That there was irregularity in the proceedings of the Court prejudicial to the rights of the defendants as follows to-wit: the Prosecuting Attorney, over the objections of the defendants, devoted the major part of his evidence in a description of the lurid details of the house of prostitu-

tion, operated by the defendants and so inflamed and prejudiced the Jury, and such testimony over-shadowed the scant testimony introduced by the Government on the indictment before the Court that the instruction given by the Court "to only consider such testimony as a circumstances of intent", were not able to eradicate from the Jury's mind the prejudice planted therein, and the verdict was the result of passion and prejudice as is more fully shown by the affidavit of James A. Cannon hereto attached and made a part hereof.

4. That the Court errored in permitting the Prosecuting Attorney for the Government, over the objections of the defendants to introduce evidence of bad character of the defendants in the first instant, when character was not put in issue at any time during the trial by the defendants.

[fol. 18] 5. Abuse of discretion by the Court which prevented the defendants from having a fair trial as follows, to-wit: the Court permitted the Prosecuting Attorney to introduce a great volume of evidence going into the lurid details of the operation of a house of prostitution for about two years prior to September 4, 1940, and more than a year thereafter and permitting the witness to testify as to such minute details as the division of profits and who called the various girls to rooms for men customers and a page from a ledger sheet as to certain earnings by the witness which evidence was introduced for the sole purpose of prejudicing the Jury against the defendant on trial and said evidence constituted fatal, prejudicial and reversable error and which evidence was immaterial and was wholly unnecessary to prove the charges as laid in the indictment.

6. That there was error in the proceedings of the Court and the Prosecuting Attorney in that the Court over the objections of the defendants, permitted the Prosecuting Attorney in his closing argument to the Jury, to describe the lurid — of the operation of a house of prostitution.

7. That the verdict is contrary to law.

8. Errors of law occurring at the trial.

9. The Court errored in refusing to give instructions number 1 tendered by the defendants.

10. The Court errored in refusing to give instructions number 2 tendered by the defendants.

11. The Court errored in refusing to give instructions number 3 tendered by the defendants.

12. The Court errored in refusing to give instructions number 4 tendered by the defendants.

13. The Court errored in overruling defendants Motion to Dismiss and Discharge the Jury after the Government rested its case, a copy of which Motion is hereto attached.

14. The Court errored in overruling the Motion for a Directed Verdict of Not Guilty, as to each of the defendants at the close of the Government's case.

15. That prior to the trial, Federal Judge T. C. Munger, now deceased, errored in refusing defendants offer to prove [fol. 19] the facts alleged in the Plea in Abatement and Motion to Quash, a copy of which Plea and Motion and offer is hereto attached and made a part hereof.

16. That there was a fatal variance between the evidence offered by the Government and the indictment, in that the evidence discloses beyond a reasonable doubt that the transportation in this case, originated in a point in Nebraska and final destination was a point in Nebraska and the transportation in or through the State of Utah, was incidental to said trip and said transportation was not within the [definitation] or meaning of the "interstate commerce" as used in the White Slave Traffic Act under Section 397, Title 18, of the U. S. Code, but regardless of said fatal variance, the Court over the objections of the defendants permitted said case to go to the Jury on the charges as laid in the indictment.

17. That two verdicts were given to the Jury instead of eight and in said two from verdicts the word guilty appeared and a blank line before the word guilty and being necessary for the Jury to fill in *not* before the word guilty in order to find the defendants not guilty and this was prejudicial to the defendants.

Hans Pete Mortensen, Lorraine Mortensen, by Thomas W. Lanigan & Wm. P. Mullen, Their Attorneys.

COPY OF PLEA IN ABATEMENT AND MOTION TO QUASH ATTACHED TO MOTION FOR NEW TRIAL—Filed March 17, 1941

Come now the defendants, and respectfully ask the Court to quash the indictment in this case, and abate the proceedings for the following reasons, to-wit:

I

That the true facts in the case which were in the knowledge and possession of the Government officials who are prosecuting the case, at the time the indictment was re- [fol. 20] turned, do not constitute transportation in interstate commerce within the meaning of Section 398, Title 18, U. S. C., or any other Federal act relating to the White Slave Traffic.

II

The indictment does not reflect the facts and information furnished to the Government agents investigating the case prior to, at the time of, and subsequent to the filing of the complaint and indictment in this case, by the said Margaret Smith and Doris McMahon, alias Goldie Wright, named in the two counts of the indictment as victims, and who testified as chief Government Witnesses before the grand jury which returned the indictment.

III

That there exists a material and fatal variance between the facts in the possession of the Government officials investigating the case and known at the time of the return of the indictment and the charges as set forth in the indictment.

IV

That in the event of a trial the evidence on the part of the Government will show a fatal and material variance between the charges as laid in the indictment, which variance will either result in a directed verdict or be fatal to any verdict of guilty which might be returned.

V

Had the indictment actually set forth the true facts in the possession of the government, and which will be testified to at the trial by the government witnesses who testi-

fied before the grand jury, it would have charged no violation of Section 398 Title 18 U. S. C., or any other Federal Statute relating to White Slave Traffic, and it would be a waste of Government time, effort and money to call a jury when the evidence that would be brought out at the trial would likely result either in a directed verdict on the government's testimony, or a verdict which must be set aside.

[fol. 21]

VI

That the indictment as filed in this case seems to be an attempt to pervert and circumvent the spirit and letter of the acts of Congress relating to White Slave Traffic in that the Government officials who are prosecuting the case were informed of the facts hereinbefore set forth in paragraph eight hereof, prior to the filing of the complaint and the returning of the indictment herein, which facts do not constitute a transportation in interstate commerce within the meaning of Section 398 Title 18 U. S. C., but on the contrary disclose a legal and legitimate transportation, purpose and intent.

VII

That if the government failed to properly instruct the grand jury as to the law, and present to the grand jury the facts which were in its knowledge and possession at the time said matter was under consideration, and which facts were within the knowledge of the witnesses who appeared before the grand jury, and which facts as made known to the grand jury would have prevented it returning of the true and valid bill in this case, then the said indictment was returned under a mistake of fact and law and is irregular and void and should be quashed.

VIII

That the defendants are reliably informed that the Government agents in charge of this prosecution prior to, at the time of, and subsequent to the filing of the complaint and indictment in this case, were informed as follows: That the defendants are husband and wife and reside at Grand Island, Nebraska, and have been such residents for more than two years last past; that in August 1940 defendants were contemplating a summer vacation circle trip from Grand Island through several western states, and to return to their home in Grand Island, when they had finished their

vacation and sight-seeing; that Margaret Smith and Doris McMahon, alias Goldie Wright, named in the first and second count of the indictment, were residents of Grand Island, Nebraska, and proposed to the defendants that they accompany defendants on the vacation trip to the mountains, and pay their own expenses; that the defendants agreed to this [fol. 22] arrangement and the two girls named in the indictment accompanied the defendants on the vacation circle trip and paid their own expenses; that on or about the 22nd day of August, 1940, the defendants and the two girls named in the indictment left Grand Island proceeding through Wyoming, Utah and Montana, and returning several days later by way of Colorado to Grand Island; that no immoral acts were committed by any of the parties on the trip and that the only intent and purpose was for a vacation with no intent to violate Section 398 Title 18 U. S. C., or any other Federal Statute, for the purpose of prostitution or debauchery or with the intent or purpose to induce, entice and compel said girls to give themselves up to debauchery or to engage in immoral practices, all of which was well known to the government officials in charge of the prosecution at the time of the returning of the indictment, and said facts do not constitute transportation in interstate commerce within the meaning of the act.

Wherefore, the defendants pray that the court order the notes and minutes of the grand jury to be brought into court, and that the Court order the witnesses appearing before the grand jury or any other witnesses the Court may deem proper, to appear and testify, and to permit defendants to produce oral testimony to support the matter set out in this motion; that if upon a hearing on the motion the allegations are true and supported by the evidence produced, the Court quash the indictment filed herein and abate the proceedings.

Hans Pete Mortensen, Lorraine Mortensen, Defendants.

* * * * * * *

Duly sworn to by Hans Pete Mortensen and Lorraine Mortensen. Jural omitted in printing.

[fol. 23] IN UNITED STATES DISTRICT COURT

Motion of Defendants to Dismiss Action and Discharge Jury

Come now the defendants, and each of them and move the Court to dismiss the action, and discharge the jury for the following reasons to-wit:

That there is a material and fatal variance between the evidence and the indictment in that:—

a. That the indictment does not inform the accused of the nature and cause of the accusation against them and each of them and therefore defendants cannot properly defend themselves.

b. That a verdict of guilty or not guilty, in this case would not preclude another indictment and prosecution arising out of the identical transportation alleged in the indictment.

c. That the indictment does not apprise the defendant of what they must meet to protect them against another prosecution and misleads them.

d. That the evidence fails to disclose an illegal purpose or intent on the part of the defendants as is required to be proven by the Government under Section 398, Title 18 of the U. S. Code.

e. That the evidence fails to establish that the transportation in the case was from one state to another as required to be proven by the Government under Title 18, Section 398 of the U. S. Code.

[fol. 24] f. That the evidence established beyond a reasonable doubt that the transportation in this case was from Grand Island, Nebraska, to Grand Island, Nebraska.

g. That the White Slave Traffic Act specifically provides that the words Interstate Commerce as used in the action shall include transportation from one state to another state. This definition necessarily excludes, by implication, transportation from one point in the state to a point in the same state, the words from and to, as used in the act manifestly referring to two different states as the respective points of origin and final destination of the transportation, and not a state through which the women *is* carried as a

mere incident to the through transportation, that the evidence established beyond a reasonable doubt that the transportation in this case originated in Grand Island, Nebraska, and the final destination was Grand Island, Nebraska, and that the transportation in or through the states of Wyoming, Colorado, and Utah, was incidental to said trip and therefore said transportation was not within the definition or meaning of the Interstate Commerce as used in the White Slave Traffic Act under Section 397, Title 18, of U. S. Code.

h. That the evidence establishes beyond a reasonable doubt that the transportation in this case was at the solicitation expenses, and request of the women named in the indictment and that the purpose of said transportation was for legitimate purposes, namely a vacation, and not for purposes of prostitution or debauchery, and was not within the intent and purpose on the part of the defendants to induce, entice, and compel said women to give themselves up to debauchery or engage in immoral purposes as is required to be proven by the Government under Section 398, Title 18, of U. S. Code.

i. That the Government in its case and chief has introduced evidence of bad character of the defendants when good character was not put in issue by the defendants, and the introduction of said evidence constitutes fatal prejudicial and reversable error for the basis of this trial.

j. That the Government in its case and chief has introduced evidence which constituted a violation of Section 28-919 of the Compiled Statutes of Nebraska, 1929, a mis- [fol. 25] demeanor, for the sole purpose of prejudicing the Jury against the defendants on trial and the introduction of said evidence constitutes fatal prejudicial and reversable error for the basis of this trial.

Hans Pete Mortensen, Lorraine Mortensen.

In United States District Court

Application of Defendants to Grant Bail and Cost Bond on Appeal, and Fix Amount Thereof—Filed January 15, 1943.

Come now the defendants, Hans Pete Mortensen, and Lorraine Mortensen and makes known to the Court that

they intend to lodge an appeal to the Circuit Court of Appeals for the Eighth Circuit, from the verdict of guilty and the overruling of the motion for a new trial, in the above entitled action on substantial and meritorious grounds as is more fully set forth in the Motion for a new trial hereto attached and made a part hereof.

Wherefore defendants pray that the Court grant bail and cost bond on appeal to said defendants and fix the amount thereof.

Hans Petg Mortensen, Lorraine Mortensen, By Thomas W. Lanigan, & Wm. P. Mullen, Their Attorneys.

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTION FOR NEW TRIAL AND FIXING BAIL BOND ON APPEAL--Filed January 15, 1943

This cause coming on to be heard upon the motion for a new trial filed by the defendants herein, and defendants thereupon offering in support thereof a certain affidavit of one James A. Cannon, one of the jurors impaneled in said cause; and plaintiff having moved to strike said affidavit from the files for the reason that the same is incompetent, immaterial and constitutes an attempt by a juror to impeach the verdict of the jury herein; whereupon it is [fol. 26] Ordered by the Court that said motion be, and the same is, hereby sustained and said affidavit is hereby stricken from the files herein. To which ruling defendants except.

And this cause coming on further for hearing upon the motion of defendants for a new trial, and the court having considered said motion, it is

Ordered by the Court that said motion for a new trial be, and hereby is, overruled and a new trial is denied. To which ruling defendants except.

And this cause coming on further for hearing upon the application of defendants, to have amount of appeal bond fixed; and the Court being of the opinion that there is involved a substantial question which should be determined by the appellate court, it is

Ordered by the Court that bail bond for the purpose of an appeal and to stay the judgment and sentence of the

court pending such appeal, be, and the same is, hereby fixed in the sum of Four Thousand Dollars ($4000.00), for each defendant; and upon furnishing such bail with good and sufficient surety to be approved by this court, said defendants be released from custody pending such appeal.

By the Court,

J. A. Donohoe, Judge.

IN UNITED STATES DISTRICT COURT

BAIL AND COST BOND OF DEFENDANT, HANS, PETE MORTENSEN —Filed January 15, 1943

Know All Men By These Presents, That we Hans Pete Mortensen principal, and A. D. Finlay and E. C. Finlay, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Four Thousand ($4000.00) Dollars to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 15th day of January, 1943.

[fol. 27] Whereas, lately, at the January Term, A. D. 1943, of the District Court of the United States, Grand Island Division, in a suit depending in said Court between the United States of America, plaintiff, and Hans Pete Mortensen defendant, a judgment and sentence was rendered against the said Hans Pete Mortensen and the said Hans Pete Mortensen has taken an appeal to the United States Circuit Court of Appeals for the Eighth Circuit to reverse the judgment and sentence in the aforesaid suit;

Now, the condition of the above obligation is such that if the said Hans Pete Mortensen shall prosecute said appeal to effect, and if appellant fails to make his appeal good, shall answer all costs and shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Eighth Circuit on such day or days as may be appointed for the hearing of said cause in said Court and prosecute his said appeal, and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Eighth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed

from as said Court may direct, if the judgment and sentence against him shall be affirmed or the appeal is dismissed; and if he shall appear for trial in the District Court of the United States for the District of Nebraska, Grand Island Division, on such day or days as may be appointed for a retrial by said District Court, and abide by and obey all orders made by said Court provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Eighth Circuit, then the above obligation to be void, otherwise to remain in full force, virtue, and effect.

Hans Pete Mortensen, A. D. Finlay, E. C. Finlay.

Witness to signatures: Sidney J. Gottneid, Wm. P. Mullen.

Approved:

J. A. Donohoe, Judge.

[fol. 28] State of Nebraska,
County of Hall, ss:

A. D. Finlay and E. C. Finlay, sureties on the foregoing bond, being each duly sworn, deposes and says that they reside at Louisville and Omaha, Nebr., respectively; that they are worth the sum of $17,500.00 Dollars over and above all debts and liabilities in property subject to execution and sale, and that said property consists of Lots One (1) and two (2), Block Forty-nine (49) Original City of Omaha, Douglas County, Nebraska, the title to all of which stands in my name.

(Affiant's signature) A. D. Finlay, E. C. Finlay.

Subscribed in my presence and sworn to before me this 15th day of January, 1943. Mary A. Mullen, Clerk U. S. District Court, by Sidney J. Gottneid, Chief Deputy. (Seal.)

In United States District Court

Bail and Cost Bond of Defendant, Lorraine Mortensen—Filed January 15, 1943

Know All Men By These Presents, That we Lorraine Mortensen, principal, and A. D. Finlay and E. C. Finlay, as sureties, are held and firmly bound unto the United

States of America in the full and just sum of Four Thousand ($4000.00) Dollars to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 15th day of January, 1943.

Whereas, lately, at the January Term, A. D. 1943, of the District Court of the United States, Grand Island Division, in a suit depending in said Court between the United States of America, plaintiff, and Lorraine Mortensen, defendant, a judgment and sentence was rendered against the [fol. 29] said Lorraine Mortensen and the said Lorraine Mortensen has taken an appeal to the United States Circuit Court of Appeals for the Eighth Circuit to reverse the judgment and sentence in the aforesaid suit;

Now, the condition of the above obligation is such that if the said Lorraine Mortensen shall prosecute said appeal to effect, and if appellant fails to make his appeal good, shall answer all costs and shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Eighth Circuit on such day or days as may be appointed for the hearing of said cause in said Court and prosecute his said appeal, and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Eighth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said Court may direct, if the judgment and sentence against him shall be affirmed or the appeal is dismissed; and if he shall appear for trial in the District Court of the United States for the District of Nebraska, Grand Island Division, on such day or days as may be appointed for a retrial by said District Court, and abide by and obey all orders made by said Court provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Eighth Circuit, then the above obligation to be void, otherwise to remain in full force, virtue, and effect.

Lorraine Mortensen, A. D. Finlay, E. C. Finlay.

Witness to Signature: Sidney J. Gottneid, Wm. P. Mullen.

Approved:

J. A. Donohoe, Judge.

STATE OF NEBRASKA,
County of Hall, ss:

A. D. Finlay and E. C. Finlay, sureties on the foregoing bond, being duly sworn, deposes and says that they reside at Louisville and Omaha, Nebr., respectively, that they are [fo]. 30] worth the sum of $17,500.00 Dollars over and above all debts and liabilities in property subject to execution and sale, and that said property consists of Lots One and Two (1 and 2) in Block Forty-nine (49) in the Original City of Omaha, Douglas County, Nebraska, the title to all of which stands in my name.

(Affiant's signature) A. D. Finlay, E. C. Finlay.

Subscribed in my presence and sworn to before me this 15th day of January, 1943. Mary A. Mullen, Clerk U. S. District Court, by Sidney J. Gottneid, Chief Deputy. (Seal.)

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed January 18, 1943

To Joseph T. Votova, United States District Attorney.

You are hereby notified that Hans Pete Mortensen and Lorraine Mortensen, defendants herein, intend to appeal to the Circuit Court of Appeals in the Eighth Judicial Circuit from verdicts of guilty on all counts returned on January 14, 1943 in the District Court of the United States within and for the Grand Island Division of the District of Nebraska, in the Eighth Judicial Circuit, against each of said defendants for violation of Section 398 Title 18 of the United States Code.

You are further notified that application to grant bail and costs bond on appeal was granted on the 15th day of January, 1943 by the Hon. J. A. Donahue, United States District Judge, for the District of Nebraska; said Court finding that substantial questions were involved, which should be passed on by the Circuit Court of Appeals; and also fixed the bond of each of said defendants in the sum of Four Thousand ($4000.00) Dollars, which bond was filed by each of said defendants and approved by the Court.

[fol. 31] Dated at Grand Island, Nebraska this 16th day of January, 1943.

Hans Pete Mortensen, Lorraine Mortensen, Defendants, by Thomas W. Lanigan, Wm. P. Mullen, Their Attorneys.

In United States District Court

Amended Notice of Appeal—Filed February 4, 1943

Name and address of appellant Hans Pete Mortensen and Lorraine Mortensen, Grand Island, Nebraska.

Name and address of appellants attorney Thomas W. Lanigan, Grand Island, Nebraska; Wm. P. Mullen, Grand Island, Nebraska.

Offense White Slave Act Sec. 398, Title 18 U. S. C.; 2 counts.

Date of Judgment January 14th, 1943.

Brief description of judgment or sentence Hans Pete Mortensen, guilty on 2 counts, sentenced to 3 years and fined $1000.00. Lorraine Mortensen guilty of 2 counts sentenced to 3 years.

Name of prison where now confined, if not on bail

Both defendants out on bail bond of $4000 for each defendant. Bond approved by the Judge on January 15th, 1943.

I, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the judgment above-mentioned on the grounds set forth below.

Hans Pete Mortensen, Lorraine Mortensen, Appellants.

Dated January 25, 1943.

Grounds of appeal:

Verdict contrary to Evidence: Whether the evidence brought the defendants under the definition of the White [fol. 32] Slave Act in proceeding from a point within Nebraska and returning to a point within Nebraska. Error of the court in permitting evidence of other crimes introduced by the government: Overruling motions for withdrawal of jurors and directed verdicts; Error in overruling

motions to quash and plea in Abatement and other assignments more fully set forth in the motion for a new trial.

(Duplicate Notice of Appeal and Duplicate Amended Notice of Appeal Filed in Appellate Court)

The Duplicate Notice of Appeal and the Duplicate Amended Notice of Appeal were filed in the United States Circuit Court of Appeals on February 8, 1943, but same are omitted from the printed record at this place to avoid duplication inasmuch as the Notice of Appeal and the Amended Notice of Appeal heretofore appear in the printed record at folio pages 42 and 43 hereof.

In United States District Court

Order for Appearance of Counsel for Directions in Regard to Preparation of Transcript on Appeal—Filed February 23, 1943

To The Honorable Joseph T. Votava, United States Attorney, and Emmet L. Murphy, Assistant United States Attorney for the District of Nebraska, and

To Thomas W. Lanigan and William P. Mullen, Attorneys for the Above Named Defendants:

You, and each of you, are hereby notified and directed to appear before me at Chambers in the United States District Court in the Post Office Building at Omaha, Nebraska; at 10:00 o'clock A. M., Friday, February 26, 1943, at which time such directions will be given as may be appropriate with respect to the preparation of the record on appeal herein, including directions for the purpose of making promptly available all necessary transcripts of testimony and proceedings.

It Is Further Ordered that notice of this hearing shall be given to said above named Attorneys for Defendants by the Clerk of this Court by mailing a copy of this No-[fol. 33] tice and Order to said Defendants at Grand Island, Nebraska.

Dated at Omaha, Nebraska, this 23rd day of February, 1943.

J. A. Donohoe, United States District Judge.

In United States District Court

Assignment of Errors Filed By Hans Pete Mortensen—Filed March 9, 1943

Comes now Hans Pete Mortensen, one of the defendants and appellant in the above entitled case, and in connection with his appeal assigns the following errors, which he as defendant avers occurred at the trial of said case, and that the action and ruling of the Court upon each of said matters was at the time duly excepted to and such exception was then allowed by the Court and upon which errors he relies to reverse the judgment and sentence entered and imposed by the Court in this case as the same appears of record.

1. Because the Trial Court erred in overruling the Plea in Abatement filed in this case.

2. Because the Trial Court erred in overruling the Motion to Quash filed in this case.

3. Because the Trial Court erred in denying his written Offer to Produce Facts by oral Testimony.

4. The Trial Court erred in denying his written Motion requesting the Government to produce the testimony presented to the Grand Jury upon which the Indictment was had.

5. Because the Trial Court erred in denying his application to review the previous ruling of Honorable Thomas C. Munger on the Plea in Abatement, Motion to Quash, Written Offer to Produce Oral Testimony and his Motion to require the Government to produce the testimony given before the Grand Jury which returned the Indictment in this case.

[fol. 34] 6. Because the Trial Court erred in overruling the Motion to Dismiss the Prosecution and to Discharge the Jury, which Motion was made at the conclusion of all of the evidence in the case and after both sides had rested their respective cases.

7. Because the Trial Court erred in overruling the Motion For a New Trial filed in this case.

8. Because the Trial Court erred in refusing to give the following Instruction requested by the defendant;—

"If you find from the evidence that the vacation trip in question commenced at Grand Island, Nebraska and that the final destination was Grand Island, Nebraska, and that the states of Colorado, Wyoming, and Utah, were incidentally gone through, you are instructed that the White Slave Traffic Act specifically provides that the words 'interstate commerce,' as used in the Act shall 'include transportation from one state . . . to another state'. This definition necessarily excludes, by implication, transportation from one point in a state to the same point within the same state and if you so find then you shall bring in a verdict of not guilty as to both Defendants on each count of the indictment."

9. Because the Trial Court erred in refusing to give the following Instruction requested by the defendant:—

"The Jury is instructed that the United States Code makes the intent and purpose an element of the crime, and if the journey was planned with no immoral purpose at the time, no crime was committed, no matter what may have occurred thereafter. It is the immoral purpose which renders interstate commerce criminal. If you find from the evidence that the journey in this case, was planned with no immoral purpose and with no intent and purpose to induce, entice and compel the said girls, named in the indictment, to give themselves up to debauchery and engage in immoral practices, then you shall find the defendants and each of them not guilty on each count of the indictment."

10. Because there was no sufficient or proper allegations of Intent, in the two counts of the Indictment or either of [fol. 35] them, which would satisfy the requirements of Section 398 of Title 18 U. S. C. A., upon which said two counts of the Indictment were grounded.

11. Because said Indictment in its two Counts and each of said Counts fails to allege in the language of the statute, to-wit,—Section 398 of Title 18 U. S. C. A., or in language of similar import, the offenses attempted to be pleaded.

12. Because said Indictment in its two Counts and each of said Counts fails to plead sufficient facts so as to bring the matters alleged within the law and to inform this defendant with sufficient particularity and certainty as to the

precise charge attempted to be made against him and fails to disclose to the defendant the necessary and proper facts relative to the claimed commission of the alleged offenses.

13. Because said Indictment in its two Counts and each of said Counts contains mere conclusions and does not plead facts.

14. Because said Indictment in its two counts and each of said Counts is vague, indefinite and uncertain and does not allege sufficient facts or circumstances tending to identify the particular offenses attempted to be charged therein.

15. Because the Indictment in its two Counts and each of said Counts is not sufficiently informative, specific, definite and certain to satisfy constitutional requirements under the applicable portions of the 5th and 6th Amendments to the Constitution of the United States.

16. Because said Indictment in its two Counts and each of said Counts does not charge the commission of any crime against the laws of the United States and fails to set forth properly and with the requisite definiteness and particularity all of the essential elements of the crimes attempted to be charged under Section 398 of Title 18 U. S. C. A.

17. Because the United States of America has failed to prove by evidence the allegations of the Indictment in its two Counts and each of said Counts.

[fol. 36] 18. Because the proof offered by the United States of America, as to the two counts of the Indictment and each of said counts, is insufficient in law and is not of such probative force as to amount to proof of guilt by evidence beyond a reasonable doubt as required by the law.

19. Because as to each of the Counts of the Indictment the Government failed to prove upon the trial of this case, by evidence beyond a reasonable —, the requisite and necessary criminal intent as required by Section 398 of Title 18 U. S. C. A., the law upon which this prosecution was grounded.

20. Because the Trial Court erred in denying the witness Doris McMahon her Constitutional right not to be compelled to give incriminating evidence against herself and compelled her to give incriminatory answers to questions propounded to her by Emmett L. Murphy, Assistant United

States Attorney, which questions related to the alleged interstate transportation and as to acts of prostitution before and after said transportation.

21. Because the Court and the Assistant United States Attorney failed to advise the witness Margaret Smith of her Constitutional right relating to self-incrimination.

22. That the verdict of the Jury is contrary to the law, contrary to the evidence and not sustained by the evidence.

23. That the judgment and sentence of the Court is contrary to the law, contrary to the evidence and not sustained by the evidence.

24. Because the Court erred in overruling the Motion for a directed verdict of not guilty made and filed at the conclusion of the evidence in this case and after both sides had rested their respective cases.

25. Because there was a fatal variance between the allegations contained in the Indictment, in its two counts and each of said counts, and the proof offered by the Government in support thereof in that the transportation alleged in both counts of the Indictment were from Salt Lake City, Utah, to Grand Island, Nebraska, whereas the evidence showed, a circle vacation trip by defendant's automobile, [fol. 37] each party paying their own expenses, from Grand Island, Nebraska, through several states and then to Salt Lake City, Utah, and then back to Grand Island, Nebraska, there being no proof of any prostitution having taken place during said circle vacation trip and the only prostitution proved was prostitution before leaving Grand Island, Nebraska, and after returning there. That the alleged transportation of the two women in "interstate commerce" was not that defined by Section 397 of Title 18 U. S. C. A. or that denounced by Section 398 of Title 18 U. S. C. A.

26. Because only one verdict was submitted by the Trial Court to the Jury, instead of four possible verdicts and in the two verdicts submitted to the jury the word guilty appeared with blank lines before said word, making it necessary for the jury to write in the word "not" before the word guilty, which was highly prejudicial to the defendant.

Wherefore, the defendant, Hans Pete Mortensen, prays that the judgment and sentence of the United States District Court for the District of Nebraska, Grand Island Division be reversed, and that the said United States District Court for the District of Nebraska, Grand Island Division, be directed to dismiss the Indictment in its two Counts, and each of said Counts, against said defendant and that said defendant be discharged.

Hans Pete Mortensen, by Eugene D. O'Sullivan, One of His Attorneys.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS FILED BY LORRAINE MORTENSEN—Filed March 9, 1943

Comes now Lorraine Mortensen, one of the defendants and appellant in the above entitled case, and in connection with her appeal assigns the following errors, which she as defendant avers occurred at the trial of said case, and that the action and ruling of the Court upon each of said matters was at the time duly excepted to and such exception was then allowed by the Court and upon which errors she relies [fol. 38] to reverse the judgment and sentence entered and imposed by the Court in this case as the same appears of record.

1. Because the Trial Court erred in overruling the Plea in Abatement filed in this case.

2. Because the Trial Court erred in overruling the Motion to Quash filed in this case.

3. Because the Trial Court erred in denying her written Offer to Produce Facts by oral Testimony.

4. Because the Trial Court erred in denying her written Motion requesting the Government to produce the testimony presented to the Grand Jury upon which the Indictment was had.

5. Because the Trial Court erred in denying her application to review the previous ruling of Honorable Thomas C. Munger on the Plea in Abatement, Motion to Quash, written Offer to Produce Oral Testimony and his Motion to

require the Government to produce the testimony given before the Grand Jury which returned the Indictment in this case.

6. Because the Trial Court erred in overruling the Motion to Dismiss the Prosecution and to Discharge the Jury, which Motion was made at the conclusion of all of the evidence in the case and after both sides had rested their respective cases.

7. Because the Trial Court erred in overruling the Motion for a New Trial filed in this case.

8. Because the Trial Court erred in refusing to give the following Instruction requested by the defendant:—

"If you find from the evidence that the vacation trip in question commenced at Grand Island, Nebraska and that the final destination was Grand Island, Nebraska, and that the states of Colorado, Wyoming, and Utah, were incidentally gone through, you are instructed that the White Slave Traffic Act specifically provides that the words 'interstate commerce,' as used in the Act shall 'include transportation from one state * * * to another state.' This definition necessarily excludes, by implication, transportation [fol. 39] from one point in a state to the same point within the same state and if you so find then you shall bring in a verdict of not guilty as to both Defendants on each count of the indictment."

9. Because the Trial Court erred in refusing to give the following Instruction requested by the defendant:—

"The Jury is instructed that the United States Code makes the intent and purpose an element of the crime, and if the journey was planned with no immoral purpose at the time, no crime was committed, no matter what may have occurred thereafter. It is the immoral purpose which renders interstate commerce criminal. If you find from the evidence that the journey in this case, was planned with no immoral purpose and with no intent and purpose to induce, entice and compel the said girls, named in the indictment, to give themselves up to debauchery and engage in immoral practices, then you shall find the defendants and each of them not guilty on each count of the indictment."

10. Because there was no sufficient or proper allegations of Intent, in the two counts of the Indictment or either of

them, which would satisfy the requirements of Section 398 of Title 18 U. S. C. A., upon which said two counts of the Indictment was grounded.

11. Because said Indictment in its two Counts and each of said Counts fails to allege in the language of the statute, to-wit,—Section 398 of Title 18 U. S. C. A., or in language of similar import, the offenses attempted to be pleaded.

12. Because said Indictment in its two Counts and each of said Counts fails to plead sufficient facts so as to bring the matters alleged within the law and to inform this defendant with sufficient particularity and certainty as to the precise charge attempted to be made against her and fails to disclose to the defendant the necessary and proper facts relative to the claimed commission of the alleged offenses.

13. Because said Indictment in its Two Counts and each of said Counts contains mere conclusions and does not plead facts.

[fol. 40] 14. Because said Indictment in its two counts and each of said Counts is vague, indefinite and uncertain and does not allege sufficient facts or circumstances tending to identify the particular offenses attempted to be charged therein.

15. Because the Indictment in its two Counts and each of said Counts is not sufficiently informative, [spedific], definite and certain to satisfy constitutional requirements under the applicable portions of the 5th and 6th Amendments to the Constitution of the United States.

16. Because said Indictment in its two Counts and each of said Counts does not charge the commission of any crime against the laws of the United States and fails to set forth properly and with the requisite definiteness and particularity all of the essential elements of the crimes attempted to be charged under Section 398 of Title 18 U. S. C. A.

17. Because the United States of America has failed to prove by evidence the allegations of the Indictment in its two Counts and each of said Counts.

18. Because the proof offered by the United States of America, as to the two counts of the Indictment and each of said counts, is insufficient in law and is not of such proba-

tive force as to amount to proof of guilt by evidence beyond a reasonable doubt as required by the law.

19. Because as to each of the Counts of the Indictment the Government failed to prove upon the trial of this case, by evidence beyond a reasonable —, the requisite and necessary criminal intent as required by Section 398 of Title 18 U. S. C. A., the law upon which this prosecution was grounded.

20. Because the Trial Court erred in denying the witness Doris McMahon her Constitutional right not to be compelled to give incriminating evidence against herself and compelled her to give incriminatory answers to questions propounded to her by Emmet L. Murphy, Assistant United States Attorney, which questions related to the alleged interstate transportation and as to acts of prostitution before and after said transportation.

[fol. 41] 21. Because the Court and the Assistant United States Attorney failed to advise the witness Margaret Smith of her Constitutional right relating to self-incrimination.

22. That the verdict of the Jury is contrary to the law, contrary to the evidence and not sustained by the evidence.

23. That the judgment and sentence of the Court is contrary to the law, contrary to the evidence and not sustained by the evidence.

24. Because the Court erred in overruling the Motion for a directed verdict of not guilty made and filed at the conclusion of the evidence in this case and after both sides had rested their respective cases.

25. Because there was a fatal variance between the allegations contained in the Indictment, in its two counts and each of said counts, and the proof offered by the Government in support thereof in that the transportation alleged in both counts of the Indictment were from Salt Lake City, Utah, to Grand Island, Nebraska, whereas the evidence showed a circle vacation trip by defendant's automobile, each party paying their own expenses, from Grand Island, Nebraska, through several states and then to Salt Lake City, Utah, and then back to Grand Island, Nebraska, there being no proof of any prostitution having taken place dur-

ing said circle vacation trip and the only prostitution proved was prostitution before leaving Grand Island, Nebraska, and after returning there. That the alleged transportation of the two women in "interstate commerce" was not that defined by Section 397 of Title 18 U. S. C. A. of that denounced by Section 398 of Title 18 U. S. C. A.

26. Because only one verdict was submitted by the Trial Court to the Jury, instead of four possible verdicts and in the two verdicts submitted to the jury the word guilty appeared with blank lines before the word, making it necessary for the jury to write in the word "not" before the word guilty, which was highly prejudicial to the defendant.

27. Because the Government failed to rebut the legal presumption that your defendant and appellant herein, if a [fol. 42] crime was committed as charged, was acting under the duress of her husband, the defendant and appellant, Hans Pete Mortensen.

Wherefore, the defendant, Lorraine Mortensen, prays that the judgment and sentence of the United States District Court for the District of Nebraska, Grand Island Division be reversed, and that the said United States District Court for the District of Nebraska, Grand Island Division, be directed to dismiss the Indictment in its two counts, and each of said Counts, against said defendant and that the said defendant be discharged.

Lorraine Mortensen, by Eugene D. O'Sullivan, One of Her Attorneys.

IN UNITED STATES DISTRICT COURT

APPLICATION FOR LEAVE OF COURT FOR EXTENSION OF TIME IN WHICH TO PROCURE BILL OF EXCEPTIONS AND SETTLE SAME —Filed February 27, 1943

Comes now the defendants, by Thomas W. Lanigan, one of their attorneys, and requests the Court for an Order granting defendants, and each of them, leave of Court to have an extension of time in which to secure, serve, settle and file a Bill of Exceptions in this case as to each of said defendants, and shows to the Court that said testimony as taken upon the trial by the Court Reporter has not been

written up and delivered to counsel, and therefore counsel could not abstract same and have it in Court to be settled by the Court at this time, and within thirty days from the taking of the appeal therein.

Dated: February 27, 1943.

Hans Pete Mortensen, Lorraine Mortensen, by Thomas W. Lanigan, One of Their Attorneys.

IN UNITED STATES DISTRICT COURT

ORDER DENYING APPLICATION FOR BILL OF EXCEPTION—Filed February 27, 1943

Now on this 27th day of February, A. D., 1943, this matter came on for hearing upon the application this day filed [fol. 43] herein by defendants praying for an extension of time within which to prepare, present and settle the Bill of Exceptions, and more than thirty days having now elapsed since the taking of the appeal herein, and no Bill of Exceptions having been presented or settled herein, and no further time for presenting or settling said Bill of Exceptions having been fixed by the Court within said period of thirty days,

It Is Ordered that no Bill of Exceptions shall be allowed or settled herein, and said application is hereby denied.

J. A. Donohoe, United States District Judge.

IN UNITED STATES DISTRICT COURT

ORDER AS TO MATTERS TO BE CONTAINED IN TRANSCRIPT ON APPEAL—Filed February 27, 1943

Now on this 27th day of February, A. D., 1943, this matter came on for hearing pursuant to the order and notice herein on February 23, 1943, and said hearing having been continued from February 26, 1943, to this date, the United States of America being represented by Emmet L. Murphy, Assistant United States Attorney, and the defendants being represented by Thomas W. Lanigan and William P. Mullen of Grand Island, Nebraska, and Eugene D. O'Sullivan of Omaha, Nebraska.

It Is Therefore Ordered And Directed by the Court that the transcript of the Clerk's record of the proceedings in this cause shall consist of the following items, pleadings and orders:

1. Indictment filed January 28, 1941.
2. Plea of Not Guilty by both defendants.
3. Plea in Abatement and Motion to Quash filed March 3, 1941.
4. Demurrer to Plea in Abatement and Motion to Quash filed March 17, 1941.
5. Motion to Withdraw Pleas of Not Guilty filed March 27, 1941, and orders thereon.

[fol. 44] 6. Offer to Produce Facts by Oral Testimony filed March 27, 1941.

7. Motion to Produce Testimony Presented to Grand Jury filed March 27, 1941.
8. Motion [—] Quash filed April 11, 1941.
9. Answer to Plea in Abatement and Motion to Quash filed April 16, 1941.
10. Journal Entry of April 16, 1941.
11. Order of January 13th, 1943, denying application to review ruling on Plea in Abatement, etc.
12. Trial Order of January 13th, 1943.
13. Trial Order of January 14th, 1943.
14. Verdicts of Jury.
15. Defendants' Instruction No. 1, which the Court refused.
16. Judgment and Commitment as to Hans Pete Mortensen January 15, 1943.
17. Judgment and Commitment as to Lorraine Mortensen, January 15, 1943.
18. Motion for New Trial, including exhibits, except affidavit of juror, filed January 15, 1943.
19. Application to Grant Bail and Fix Cost Bond on Appeal, filed January 15, 1943.
20. Order Overruling Motion for New Trial and Fixing Bail Bond on Appeal, January 15, 1943.
21. Bail and Cost Bonds of both defendants on appeal.
22. Notice of Appeal filed January 18, 1943.
23. Amended Notice of Appeal filed February 4, 1943.
24. Order and Notice filed February 23, 1943.
25. Assignment of Errors to be filed within ten days from this date.

26. Application for time in which to prepare, serve and settle Bill of Exceptions, and Order of Court denying same.

J. A. Donohoe, United States District Judge.

[fol. 45] In United States District Court

Supplemental Order as to Additional Matter to Be Contained in Transcript on Appeal—Filed March 3, 1943

It Is Hereby Ordered By The Court that the transcript and record of proceedings on appeal herein, in addition to the matters designated in the Order of this Court of February 27, 1943, shall also contain the Journal Entry thereafter made and entered herein on this 3rd day of March, 1943.

Dated at Omaha, Nebraska, this 3rd day of March, 1943.

J. A. Donohoe, United States District Judge.

In United States District Court

Journal Entry Pertaining to Written Communication Between Court and Counsel Relative to Order Directing Counsel to Appear in Regard to Preparation of Transcript on Appeal—Filed March 3, 1943

The Clerk of this Court having theretofore notified the Court, as provided in Rule VII of the Rules of Practice and Procedure in Criminal Cases, of the filing of Notice of Appeal of defendants herein, the Court, on January 22, 1943, addressed a letter of direction and inquiry to Thomas W. Lanigan and Wm. P. Mullen, Grand Island, Nebraska, Attorneys for the above named defendants, and which said letter is as follows:

"January 22nd, 1943.

Thomas W. Lanigan, Wm. P. Mullen, Attorneys at Law,
Grand Island, Nebraska

In Re: United States vs. Hans Pete Mortensen and Lorraine Mortensen—No. 357 Criminal Grand Island Division

Gentlemen:

The Clerk of the Court, in keeping with the requirements of Rule 7 of the Rules of Criminal Procedure, has notified me of the filing of your Notice of Appeal.

[fol. 46] Under this rule, it is now the duty of the Court to at once direct the appellant, or his attorney, and the United States Attorney, to appear before me, and I am required to give such directions as may be approved with respect to the preparation of the record of appeal.

These directions may be given at any place which I may designate. I therefore designate the Chambers of the Court here in Omaha.

I hesitate to fix the time without first consulting you. I therefore wish you would kindly advise when you will be ready for this meeting. I assume you will want to have a transcript of the evidence before coming down, and also a transcript of the instructions to the jury. Otherwise we would hardly be in a position to accomplish very much in the way of directions.

Under the rule, the meeting must be prompt, and I therefore wish that you would advise me what time will best suit your convenience, and I will set the matter accordingly and advise the United States Attorney.

Very truly yours, J. A. Donohoe, United States District Judge."

JAD:H*

Thereafter, on January 27, 1943, the Court received a communication from the said Thomas W. Lanigan as follows:

"Thomas W. Lanigan
Attorney and Counselor at Law
Central Building
Grand Island, Nebr.

January 26, 1943.

Honorable James A. Donohoe, United States District Judge,
Post Office Building, Omaha, Nebraska

In Re: United States vs. Hans Pete Mortensen and Lorraine Mortensen—No. 357 Criminal—Grand Island Division

DEAR MR. DONOHOE:

After receiving your letter of January 22, I immediately got in touch with the Court Reporter, O. A. Abbott and [fol. 47] advised him of the contents of your letter. He said he would start to work on the transcript immediately, but did not know what date he would be able to get it out.

I have sent for a copy of the rules but they have not as yet arrived, possibly you could advise me how many days the appellant has to have the Transcript of the evidence and pleadings on file in the Circuit Court.

If you set a day and the Court Reporter would not have it completed, I was thinking that it might be possible, he could come down and read the evidence from his notes. I would suggest that you set a date, and if, for any good reasons, we could not be there on that particular date, I could get in touch with you by wire or otherwise. I presume you would want to give the Court Reporter at least 30 days to see if he could get it out.

Yours very truly, Tom Lanigan, Thomas W. Lanigan.

TWL:lp

P. S. I think Gene O'Sullivan will be associated with me in the appeal—"

And thereafter, on February 1, 1943, a further communication was addressed to the said Thomas W. Lanigan, under direction of this Court, and which said letter is as follows:

"February 1st, 1943.

Thomas W. Lanigan, Attorney at Law, Central Building, Grand Island, Nebraska

In Re: United States vs. Hans Pete Mortensen and Lorraine Mortensen—No. 357 Crim.

DEAR MR. LANIGAN:

Your letter of the 26th received. Judge Donohoe is in the hospital with a bad cold, but is expected to return to the office within a few days.

I presume you have by this time received a copy of the rules of the United States Circuit Court of Appeals for the [fol. 48] Eighth Circuit, which rules became effective May 31, 1942.

If you do not have these as yet, then you might refer to the Rules of Criminal Procedure following Section 688, Title 18, U. S. C. A. Your attention is particularly directed at this time to rules 7 and 9 of the Rules above mentioned.

With best regards, I am

Very sincerely yours, Mae D. Hammond, Secretary."

H.

Thereafter, on February 23, 1943, no further communication having been received from the said Attorneys for defendants, the Order of February 23, 1943, under Rule VII of said Rules of Practice and Procedure in Criminal Cases was entered and filed herein.

J. A. Donohoe, United States District Judge.

In United States District Court

Application of Defendants to Have Certain Instruction Requested by Defendants Included in Transcript on Appeal—Filed March 16, 1943

Comes now, Hans Pete Mortensen and Lorraine Mortensen, and each of them, by Eugene D. O'Sullivan, one of their attorneys, and move the Court to enlarge the Order of February 27th, 1943, and Supplement the Transcript of the Record on Appeal by permitting them, the said defendants, and each of them, to have the following Instruction which was requested by the Defendants, and each of them, included in the Transcript of the Record on Appeal in the above entitled cases.

"If you find from the evidence that the vacation trip in question commenced at Grand Island, Nebraska, and that the final destination was Grand Island, Nebraska, and that the states of Colorado, Wyoming, and Utah, were incidentally gone through, you are instructed that the White [fol. 49] Slave Traffic Act specifically provides that the words "interstate commerce", as used in the act shall "include transportation from one state * * * to another state". This definition necessarily excludes, by implication, transportation from one point in a state to the same point within the same state and if you so find then you shall bring in a verdict of not guilty as to both Defendants on each count of the indictment."

Dated at Omaha, Nebraska, March 16th, 1943.

Hans Pete Mortensen and Lorraine Mortensen, by Eugene D. O'Sullivan, One of Their Attorneys.

In United States District Court

Order Denying Application to Enlarge Order of February 27th, 1943, and Supplementing Transcript of Record on Appeal—Filed March 17, 1943

Now on this 17th day of March, 1943, the matter of the defendant's Application to Supplement the Transcript of the Record on Appeal in this case and enlarge the previous order of the Court relating to the transcript of the Record on Appeal dated February 27th, 1943, came on for hearing before the Court, and the Court having heard and considered same and being fully advised in the premises finds that the request as prayed for should not be granted by the Court because there was no Bill of Exceptions in this case and the Instructions given are not before the reviewing Court so as to determine whether or not a like instruction to that requested if proper was given by the Court.

It Is Therefore Considered, Ordered And Adjudged by the Court that defendant's Application be and the same is hereby denied. Exception allowed each defendant.

By the Court: J. A. Donohoe, Judge.

[fol. 50] Clerk's Certificate to foregoing transcript omitted in printing.

In United States Circuit Court of Appeals, Eighth Circuit

No. 12,531

Hans Pete Mortensen and Lorraine Mortensen, Appellants,

vs.

The United States of America, Appellee

Appeal from the District Court of the United States for the District of Nebraska

Order Denying Application of Appellants for Right to Have Bill of Exceptions, and for Additional Time to Prepare, Serve and Settle Same, etc.—March 24, 1943

This matter comes before the Court upon an application "for right to have a bill of exceptions and for additional

[fol. 51] time to prepare, serve, settle and file same," upon the attached affidavits of Thomas W. Lanigan and O. A. Abbott with exhibits attached to the affidavit of Mr. Lanigan, and upon the objection to such application of appellants (filed by appellee). Appellants were represented in oral argument by Mr. Eugene D. O'Sullivan and appellee by Mr. Emmet L. Murphy, Assistant United States Attorney, and the Court being advised,

It is Ordered that said application be and is hereby denied.

March 24, 1943.

[fol. 52] Appearances of counsel, omitted in printing.

[fol. 53] In United States Circuit Court of Appeals, Eighth Circuit

No. 12531. Criminal

Hans Pete Mortensen and Lorraine Mortensen, Appellants,

vs.

The United States of America, Appellee

Notice and Application of Appellants for Right to Have Bill of Exceptions and for Additional Time to Prepare and File Same, et al.—Filed March 18, 1943

Notice

To the Appellee, The United States of America, Represented in This Action by Joseph T. Votava, United States Attorney, and Emmet L. Murphy, Assistant United States Attorney, Both of Said Counsel Being Attorneys for the District of Nebraska:

You Are Hereby Notified that Hans Pete Mortensen and Lorraine Mortensen, Appellants herein, through Eugene D. O'Sullivan, one of their attorneys, has applied to the Circuit Court of Appeals for the Eighth Judicial Circuit for an order of said Court granting said appellants, and each of them, 40 days additional time in which to prepare, serve, settle and file a Bill of Exceptions in this case, a

copy of which Application together with a copy of the Affidavit of Thomas W. Lanigan which has nine (9) exhibits attached thereto, and the Affidavit of O. A. Abbott, Shorthand Court Reporter, who reported the trial of said appellants case in the District Court is herewith handed to you.

That the appellants will call said Application with the supporting affidavits and exhibits aforementioned, up for hearing before the Circuit Court of Appeals in and for the Eighth Circuit sitting at Kansas City, Missouri, on the 22 day of March, 1943, at the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard which said date is more than five (5) days from the service of this notice.

[fol. 54] Dated at Omaha, Nebraska, this 12 day of March, 1943.

Hans Pete Mortensen and Lorraine Mortensen, By Eugene D. O'Sullivan, One of Their Attorneys.

Receipt of a copy of this Notice and copies of the aforementioned Application and the Affidavits of Thomas W. Lanigan, containing nine (9) exhibits, and the Affidavit of O. A. Abbott, are acknowledged by us this 16th day of March, 1943, and service of this Notice and said affidavits and exhibits upon the appellee United States of America is hereby acknowledged the day and date above named.

United States of America, Appellee, By Joseph T. Votava, per Emmet L. Murphy, Assistant United States Attorney.

Application

Comes now Hans Pete Mortensen and Lorraine Mortensen, and each of them, by Eugene D. O'Sullivan, one of their attorneys, and moves the Court for an order granting said Appellants and each of them the right to have a Bill of Exceptions in this case and for Forty (40) day- additional time from the entry of any such order by this Court in whi h to prepare, serve, settle and file said Bill of Exceptions in this case, and in connection with and as a part of this Application the appellants show to the Court that no immediate compliance by the Court or counsel for the defendants was had with reference to Rule Seven (7) after the Notice of Appeal was filed with the

Clerk, and the Trial Court did not at once direct the respective attorneys to appear before him and give them appropriate directions with respect to the preparation of the record on appeal, etc., and the 30 day period in which to settle the Bill of Exceptions contemplated by Rule Nine (9) of the Rules Relating to Appeals in criminal cases had expired before counsel for defendants were able to [fol. 55] secure from the shorthand reporter, who reported the trial of appellants in the District Court for the District of Nebraska, Grand Island Division, a transcript of the testimony and the trial proceedings and that through oversight, inadvertence and mistake, the then counsel for the appellants, not being able to prepare said Bill of Exceptions so that it could be settled within 30 days failed to secure an extension of time from the Trial Court within said 30 day period and hence the application for additional time in which to prepare, serve, settle and file said Bill of Exceptions was denied by the Trial Court and said appellants will not have a Bill of Exceptions for the consideration of this Court on appeal unless the order herein prayed for is granted.

That in Counsel's opinion it is necessary in order that appellants may make a proper presentation to this Court of this appeal that said appellants be permitted by this Court to have said 40 days additional time in which to have their Bill of Exceptions settled and filed.

That this Application is not made for the purpose of delay, but for the purpose of presenting to this Court an abstract of the facts produced upon the trial and thus obtaining a just decision upon this appeal.

That attached hereto and made a part hereof are the affidavits of Attorney Thomas W. Lanigan and Court Reporter O. A. Abbott and that said Attorney Lanigan's Affidavit has attached thereto Nine (9) Exhibits which are true and correct and which are necessary in counsel's opinion to a proper presentation of this application to this Court.

Hans Pete Mortensen and Lorraine Mortensen, By
Eugene D. O'Sullivan, One of Their Attorneys.

[fol. 56] AFFIDAVIT OF THOMAS W. LANIGAN IN SUPPORT OF APPLICATION

UNITED STATES OF AMERICA,
State of Nebraska,
County of Hall, ss:

I, Thomas W. Lanigan, being first duly sworn upon my oath depose and say, that I am now and for a number of years last past have been a duly licensed and practicing attorney; that my law office is now, and for several years last past, has been located in Grand Island, Hall County, Nebraska; that on and prior to the month of January, 1943 an attorney named William P. Mullen of Grand Island, Nebraska, and I were employed as attorneys to represent the appellants Hans Pete Mortensen and Lorraine Mortensen who were arrested and later tried in the Grand Island Division of the United States Court at Grand Island, Nebraska, for a violation of the United States White Slave Law, said case being known on the Court Docket of the Clerk of said Court of the Grand Island Division of Nebraska as No. 337 Criminal; that a trial of said case on a joint indictment containing two counts was had in the District Court at Grand Island, Nebraska, on January 13th and 14th, 1943, and said trial resulted in a verdict of guilty as to both defendants on both counts of the indictment; that Motions for new Trials were filed, submitted and overruled by the Court on the 15th day of January, 1943 and that thereafter on January 15th, 1943, Hans Pete Mortensen was sentenced to imprisonment for 3 years on each of the two counts of the Indictment both of said sentences to run concurrently, and fined $500.00 on each of said counts, and Lorraine Mortensen was sentenced to 3 years imprisonment on each of said two counts said sentences to run concurrently; that thereafter and on January 18th, 1943 a Notice of Appeal was filed which was within 5 days after sentence and the defendants were permitted by the Court to give supersedeas and thereafter they furnished bail and were released by the Court during the pendency of the contemplated appeals; that after said defendants were sentenced and on January 22, 1943, I ordered from the Court Reporter, O. A. Abbott, who reported all of the testimony and trial proceedings a transcript of same and a cash deposit was made with said O. A. Abbott and I

[fol. 57] obligated myself to pay any further amount due and owing above said deposit; that said Court Reporter accepted said employment and I urged him to write same up at the earliest possible date so that I could abstract same and have same ready to serve, settle and file, as the Bill of Exception in this appeal; that I made many efforts to secure said testimony and trial proceedings from said O. A. Abbott, but he claimed that due to the press of other business he could not write same up forthwith from his shorthand notes; that I endeavored to exercise due diligence in the premises and if I had been able to secure the transcript of the evidence and trial proceedings I would have been able to have had a Bill of Exceptions served, settled and filed herein within the 30 days provided for by said rules; that I am attaching hereto and making a part of this Affidavit as fully and completely as if herein set forth the following Exhibits: (a) Exhibit 1, which is a letter to me from O. A. Abbott, dated January 25th, 1943. (b) Exhibit 2, which is a letter from O. A. Abbott to me dated March 3rd, 1943. (c) Exhibit 3, which is a copy of a letter to me from Hon. J. A. Donohoe, the Trial Judge, dated January 22nd., 1943. (d) Exhibit 4, which is a copy of a letter which I sent to District Judge James A. Donohoe, dated January 26th, 1943. (e) Exhibit 5, which is a letter from Mae D. Hammond in reply to my letter to District Judge James A. Donohoe, dated February 1st., 1943. (f) Exhibit 6, which is a letter from the Deputy United States Clerk at Grand Island, Nebraska to me dated February 24th, 1943. (g) Exhibit 7, which is a copy of an Order and Notice directed to counsel by District Judge James A. Donohoe dated February 23rd., 1943. (h) Exhibit 8, which is a copy of an Application for leave of Court for Extension of time in which to procure a Bill of Exceptions and file same, dated February 27th, 1943. (i) Exhibit 9, which is a copy of an Order entered by District Judge James A. Donohoe denying the Application for a Bill of Exceptions in this case, dated February 27th, 1943; that heretofore I have never appeared as counsel in any criminal case appealed from the District Court of the United States to the Circuit Court of Appeals under the new rules and was not familiar with the present rules of procedure governing said appeals; that I did not have a copy of the rules referred to in Exhibits 3 and 5 and over-[fol. 58] looked the fact that if the Bill of Exceptions was

not settled within 30 days, as provided for by said Rule 9 of the rules pertaining to criminal appeals, then an extension of time had to be secured from the Trial Court within said 30 day period, and never learned about said matter until I appeared before District Judge James A. Donohoe on February 26th, 1943, pursuant to the Order and Notice designated herein as Exhibit 7, which was not within the 30 day period; that no immediate action by the Trial Court and counsel for the defendant was had with reference to complying with Rule Seven (7) after the Notice of Appeal was filed with the Clerk of the Court and the Trial Court did not at once direct the respective attorneys to appear before him at some designated place within the judicial district and gave such directions as were appropriate with respect to the preparation of the record on appeal, including directions for the purpose of making promptly available all necessary transcripts of testimony and proceedings; that although your affiant was unfamiliar with this rule he was laboring under the impression that he would be advised by the Trial Judge before any default occurred which would deny appellants their rights to a Bill of Exceptions and waited for orders to appear before said Trial Judge and discuss and agree upon what should go into said Bill of Exceptions; that his letters, to the Trial Court hereto attached evidence that such was affiants understanding of said matter; that my clients have been to great expense in instituting this appeal and said appeal is meritorious as is evidence by the fact that the Trial Judge James A. Donohoe granted the defendants bail; that whether or not a crime was committed as denounced by Section 398 of Title 18 U. S. C. A., known as the White Slave Law is to be determined from the evidence introduced upon the trial; that the transcript which may be prepared under Rule 8 of the rules relating to criminal appeals may not definitely show in a satisfactory way the facts upon which the prosecution and conviction was predicated and an appeal thereon may be futile, because of the inability to substantiate or discern the facts from the transcript; that the alleged transportation as the evidence disclosed was that the defendants and the two women alleged to be "victims" all resided in Grand Island, Nebraska, and said two women were employed at the room-
[fol. 59] ing house of the defendants and did carry on prostitution therein before the trip commenced; that the defendants planned to visit the mother of the defendant Lor-

raine Mortensen who lived in Salt Lake City, Utah and also planned on vacationing in Yellowstone National Park; that the two women desired to accompany them and agreed that they would pay their own expenses if the defendants would allow them to accompany them to see the mountains and western scenery; that the only purpose and intent of the trip was sightseeing and visiting the defendant Lorraine Mortensen's parents, and amounted to a circle trip commencing at Grand Island, Nebraska and going through several western states by Salt Lake City and returning to Grand Island, the place of commencing said trip; that nothing was said on the trip about the two women returning to Grand Island or of continuing to be employed by the defendants at Grand Island or any other place and that they were at no time induced or enticed to return to Nebraska for the purpose of prostitution and debauchery and were free to come and go as they pleased without restraint on the part of the defendants; that no acts of prostitution or solicitation occurred on said trip and each of said woman paid their own expenses; that after returning to Grand Island, Nebraska, the said women renewed their prostitution in the defendant's rooming house; that the Indictment in order to charge the crime of White Slavery ignored the fact that the starting point of the trip was Grand Island, Nebraska, and picked up these parties at Salt Lake City, Utah, and charged an unlawful transportation therefrom to Grand Island, Nebraska, which Salt Lake City, Utah, was an intermediate point on the Circuit vacation trip and was not the starting point of said transportation, which if alleged correctly would have been Grand Island, Nebraska; that the ultimate destination would also be Grand Island, Nebraska; that there was no evidence showing the formulation of any intent by the defendants or either of them to commit an offense at Salt Lake City, Utah or any other place on said circle tour; that the testimony also showed that the two defendants were husband and wife and that the husband dictated and controlled the course of said trip and that the wife and two other women merely rode along with him and there was no evidence offered by the United States of America rebutting the presumption that if a [fol. 60] crime was shown to have been committed that the wife was not acting under the duress of her husband; that there is authority in the case of United States v. Wilson, 266 Fed. 712 which sustaines the contention that no crimes

were committed and there are no reported cases holding to the contrary; that if these defendants are allowed 40 days additional time as requested in their Application to this Court in which to prepare, serve, settle and file their Bill of Exceptions same will be in the interests of justice and will enable the Court to have all of the facts before it upon the hearing of this appeal so that a true and correct decision of this appeal may be had.

Thomas W. Lanigan.

Subscribed in my presence and sworn to before me this 11th day of March, 1943. Wm. P. Mullen, Notary Public. My commission expires May 4, 1943. (Notary Seal.)

EXHIBIT 1

DISTRICT COURT, ELEVENTH JUDICIAL DISTRICT OF NEBRASKA

E. G. Kroger, Judge, Grand Island, Nebraska

Arthur H. Bass, Reporter

January 25, 1943.

Mr. Thomas W. Lanigan, 202½ North Locust Street, City

DEAR MR. LANIGAN:

Re: UNITED STATES OF AMERICA

v.

MORTENSENS

I beg to acknowledge receipt of your telephone call of Friday, January 22nd, ordering transcript of proceedings [fol. 61] and bill of exceptions in the above case and I have entered the order and will make a start in a few days.

As to how long it will take to get this out depends on court work but can get it out in plenty of time, that is within sixty days after the overruling of the motion for a new trial.

As to what the cost will be, it is impossible to state at this time because I do not know for certain what you want

in the way of the opening statements and arguments. I am [assuming] that you will want the opening statement of Mr. Murphy as you made at least three objections thereto and may want your opening statement because his is in.

In as much as I will have to hire most all of this typed, I wish you or have your clients send me $100.00 and we can decide later just what is to be included. In the meantime I will go right ahead and make one original and one carbon copy of the proceedings and will include the opening statement of Mr. Murphy, with your objections and the courts ruling in full, and then I will skip your opening statement and go to the testimony and proceed to get that out and then I will skip the arguments and go to the Instructions of the court and you can advise me later if you want any of the part I am tentatively omitting.

This is not a long record but takes time to get it out.

This also covers the matters of our phone conversation of this morning.

Yours truly, O. A. Abbott, Court House, Grand Island, Nebraska.

[fol. 62] EXHIBIT 2

District Court
Eleventh Judicial District of Nebraska
E. G. Kroger, Judge
Grand Island, Nebraska

March 3, 1943

O. A. Abbott, Reporter

Mr. Eugene D. O'Sullivan,
636 Electric Building,
Omaha, Nebraska.

Re: United States v. Mortensens

I finished this morning, a complete transcript, in duplicate, of the testimony taken on the trial of the above entitled before Judge Donahue and a jury.

I took the same to the offices of T. W. Lanigan and W. P. Mullen and they instructed me to send it to you and am enclosing herewith one original copy and the last portion of the second copy, as they advised me you had the first part of the copy, and you can bind the portion you have with the balance enclosed.

This case was tried on January 13 and 14, 1943 and Mr. T. W. Lanigan ordered a transcript of the evidence on January 22, 1943 and shortly thereafter I started work on it. There were two exhibits offered in evidence and I wrote out the testimony down to the first exhibit and then went to the office of the Deputy Clerk of the U. S. Court here and asked for the file and exhibits and she advised me the same had all been sent to the Clerk in Omaha to prepare the record on appeal. I told her I must have the exhibits shortly; she said she would write for the file and I asked her to phone me when it was received. I continued to write out the record down to Exhibit 2 and then had to stop, as various items in Exhibit 2 were referred to. This was about three weeks ago that I requested the file and exhibits. Shortly after that, Mr. T. W. Lanigan saw me and said Judge Donahue had written him about fixing a time to settle [fol. 63] the record and if I did not have the transcript of the evidence completed at the time, he asked me if I could go down to Omaha and read to Judge Donahue what I had not extended and I told him I could, and so I continued to transcribe my notes, as above referred to, and knew that the file would not come back here until the hearing in Omaha.

A short time after Mr. Lanigan first advised me about the letter from Judge Donahue he said he told me that he had a letter from Miss Hammond, Secretary to Judge Donahue, that the Judge was sick, so knowing that they would need the file and exhibits when the hearing was on at Omaha and also knowing that I had almost finished the transcript and could easily do so within sixty days from the overruling of the motion for a new trial, I did not urge the return of the exhibits.

A hearing was had before Judge Donahue in Omaha on last Saturday and on the Tuesday following. I got to see the file and exhibits, which had just been returned from Omaha, and that day, March 2, and this morning I completed the transcribing of the evidence, and took same to Mr. Lanigan's and Mr. Mullen's office, as herein before set forth.

I understood I had sixty days to extend the testimony and if that is true, I still have about fourteen days left but would have finished it much sooner if the exhibits had been available to me when I wanted them.

Please acknowledge receipt and oblige.

Very truly yours, O. A. Abbott.

EXHIBIT 3

United States District Court
District of Nebraska

Judges:
James A. Donohoe
Omaha, Nebraska
John W. Delehant
Lincoln, Nebraska

January 22nd, 1943

[fol. 64] Thomas W. Lanigan,
Wm. P. Mullen,
Attorneys at Law,
Grand Island, Nebraska.

In Re: United States v. Hans Pete Mortensen and Lorraine Mortensen—No. 357 Criminal Grand Island Division

Gentlemen:

The Clerk of the Court, in keeping with the requirements of Rule 7 of the Rules of Criminal Procedure, has notified me of the filing of your Notice of Appeal.

Under this rule, it is now the duty of the Court to at once direct the appellant, or his attorney, and the United States Attorney, to appear before me, and I am required to give such directions as may be approved with respect to the preparation of the record of appeal.

These directions may be given at any place which I may designate. I therefore designate the Chambers of the Court here in Omaha.

I hesitate to fix the time without first consulting you. I therefore wish you would kindly advise when you will be ready for this meeting. I assume you will want to have a transcript of the evidence before coming down, and also a transcript of the instructions to the jury. Otherwise we would hardly be in a position to accomplish very much in the way of directions.

Under the rule, the meeting must be prompt, and I therefore wish that you would advise me what time will best suit your convenience, and I will set the matter accordingly and advise the United States Attorney.

Very truly yours, J. A. Donohoe, United States District Judge.

JAD:H

[fol. 65] EXHIBIT 4

January 26, 1943

Honorable James A. Donohoe,
United States District Judge,
Post Office Building,
Omaha, Nebraska.

In Re: United States vs. Hans Pete Mortensen and Lorraine Mortensen—No. 357 Criminal Grand Island Division

Dear Mr. Donohoe:

After receiving your letter of January 22, I immediately got in touch with the Court Reporter, O. A. Abbott and advised him of the contents of your letter. He said he would start to work on the transcript immediately, but did not know what date he would be able to get it out.

I have sent for a copy of the rules but they have not as yet arrived, possibly you could advise me how many days the appellant has to have the Transcript of the evidence and pleadings on file in the Circuit Court.

If you set a day and the Court Reporter would not have it completed, I was thinking that it might be possible, he could come down and read the evidence from his notes. I would suggest that you set a date, and if, for any good reasons, we could not be there on that particular date, I could get in touch with you or otherwise I presume you would want to give the Court Reporter at least 30 days to see if he could get it out.

Yours very truly, Thomas W. Lanigan.

TWL:lp.

P. S. I think Gene O'Sullivan will be associated with me in the appeal—"

[fol. 66] EXHIBIT 5

United States District Court
District of Nebraska

Judges:
James A. Donohoe
Omaha, Nebraska
John W. Delehant
Lincoln, Nebraska

February 1st, 1943

Thomas W. Lanigan,
Attorney at Law,
Central Building,
Grand Island, Nebraska.

In Re: United States v. Hans Pete Mortensen and Lorraine Mortensen—No. 357 Crim.

Dear Mr. Lanigan:

Your letter of the 26th received. Judge Donohoe is in the hospital with a bad cold, but is expected to return to the office within a few days.

I presume you have by this time received a copy of the rules of the United States Circuit Court of Appeals for the Eighth Circuit, which rules became effective May 31, 1942.

If you do not have these as yet, then you might refer to the Rules of Criminal Procedure following Section 688, Title 18, U. S. C. A. Your attention is particularly directed at this time to rules 7 and 9 of the Rules above mentioned. With best regards, I am

Very sincerely yours, Mae D. Hammond, Secretary.

H.

[fol. 67] EXHIBIT 6

United States District Court
Office of the Clerk
District of Nebraska
Grand Island, Nebraska

February 24, 1943.

Mr. Thomas A. Lanigan, Attorney, Mr. William P. Mullen, Attorney, 202½ North Locust Street, Grand Island, Nebraska

GENTLEMEN:

Re: United States vs. Mortensen, etc. Criminal No. 357

Enclosed, you will find copy of Order and Notice in the above case.

Very truly yours, Emily Kalkowski, Deputy Clerk.

EK
enc.

cc Mary A. Mullen, Clerk
Omaha, Nebraska.

EXHIBIT 7

(Order of District Court for Appearance of Counsel for Directions in regard to preparation of Transcript on Appeal)

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF NEBRASKA, GRAND ISLAND DIVISION

No. 357

UNITED STATES OF AMERICA, Plaintiff,

vs.

HANS PETE MORTENSEN and LORRAINE MORTENSEN, husband and wife, Defendants

Criminal

To the Honorable Joseph T. Votava, United States Attorney, and Emmet L. Murphy, Assistant United States Attorney for the District of Nebraska, and
To Thomas W. Lanigan and William P. Mullen, Attorneys for the Above Named Defendants:

[fol. 68] You, and each of you, are hereby notified and directed to appear before me at Chambers in the United

States District Court in the Post Office Building at Omaha, Nebraska, at 10:00 o'clock A. M., Friday, February 26, 1943, at which time such directions will be given as may be appropriate with respect to the preparation of the record on appeal herein, including directions for the purpose of making promptly available all necessary transcripts of testimony and proceedings.

It Is Further Ordered that notice of this hearing shall be given to said above named Attorneys for Defendants by the Clerk of this Court by mailing a copy of this Notice and Order to said Defendants at Grand Island, Nebraska.

Dated at Omaha, Nebraska, this 23rd day of February, 1943.

J. A. Donohoe, United States District Judge.

Filed: Feb. 23, 1943. Mary A. Mullen, Clerk. By Emily Kalkowski, Deputy.

EXHIBIT 8

Application for Leave of Court for Extension of Time in Which to Procure Bill of Exceptions and Settle Same

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF NEBRASKA, GRAND ISLAND DIVISION

No. 357

UNITED STATES OF AMERICA, Plaintiff,

vs.

HANS PETE MORTENSEN and LORRAINE MORTENSEN, Defendants

Criminal

Comes now the defendants, by Thomas W. Lanigan, one of their attorneys, and requests the Court for an Order granting defendants, and each of them, leave of Court to have an extension of time in which to secure, serve, settle and file a Bill of Exceptions in this case as to each of said defendants, and shows to the Court that said testimony as taken upon the trial by the Court Reporter has not been written up and delivered to counsel, and therefore counsel

could not abstract same and have it in Court to be settled [fol. 69] by the Court at this time, and within thirty days from the taking of the appeal therein.

Dated: February 27, 1943.

Hans Pete Mortensen, Lorraine Mortensen, by Thomas W. Lanigan, One of Their Attorneys.

EXHIBIT 9

Order Denying Application for Bill of Exceptions

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF NEBRASKA, GRAND ISLAND DIVISION

No. 357

UNITED STATES OF AMERICA, Plaintiff,

vs.

HANS PETE MORTENSEN and LORRAINE MORTENSEN, Defendants

Criminal

Now on this 27th day of February, A. D., 1943, this matter came on for hearing upon the application this day filed herein by defendants praying for an extension of time within which to prepare, present and settle the Bill of Exceptions, and more than thirty days having now elapsed since the taking of the appeal herein, and no Bill of Exceptions having been presented or settled herein, and no further time for presenting or settling said Bill of Exceptions having been fixed by the Court within said period of thirty days,

It Is Ordered that no Bill of Exceptions shall be allowed or settled herein, and said application is hereby denied.

James A. Donohue, United States District Judge.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 12531

HANS PETE MORTENSEN and LORRAINE MORTENSEN, Appellants

vs.

THE UNITED STATES OF AMERICA, Appellee

Criminal

AFFIDAVIT OF O. A. ABBOTT IN SUPPORT OF APPLICATION

I, O. A. Abbott, being first duly sworn upon my oath depose and say, that for many years I have been a citizen [fol. 70] and resident of Grand Island, Nebraska; that by occupation I am a Court Reporter and have followed said calling for many years; that I was engaged by the defendants above named and Thomas W. Lanigan and William P. Mullen, the attorneys who represented the said defendants, to report the evidence and all trial proceedings of the defendants when their case was heard in the United States District Court at Grand Island, on January 13th and 14th, 1943; that I reported all of said evidence and proceedings in said case; that after the defendants had been convicted, sentenced and released on bail I was employed to write up the evidence and that they might want all of the opening and closing statements and other proceedings besides the evidence and would advise me later, the date of said employment being about the 22nd of January, 1943; that shortly thereafter $50.00 was paid to me on account and I was willing to extend credit for any balance due and owing; that I began writing up said evidence and within a few days called on the Deputy Clerk of the United States Court at Grand Island for the exhibits and she told me that she had sent them and entire record to Omaha and I told her I must have said exhibits and she said she would write for the record and asked to have it returned from Omaha and within a very few days thereafter I saw Mr. Thomas W. Lanigan and he said he had a letter from Judge Donohue asking to have a date fixed to settle the record and I told Mr. Lanigan about asking for the exhibits and that I would have to stop getting out the testimony until I could get the exhibits, and Mr. Lanigan said that when a date is fixed and

if you haven't all the record out we can take you with us to Omaha and have you read what is not extended and I agree to go to Omaha, and then thereafter Mr. Lanigan advised me that he had a letter from Judge Donohue's secretary to the effect that he was in the hospital and Mr. Lanigan said that we will let you know when a date for hearing is fixed. I did extend said testimony down to the point where it was necessary for me to have the exhibits and then quit because I knew or felt sure the record would not be sent back until Judge Donohue was again at work and could hear them. A part of the record was delivered to Mr. Lanigan the last of February, by the Clerk when I was out of town, and a [fol. 71] hearing had in Omaha and then the record was sent back from Omaha, I believe on Saturday, and on Tuesday I had access to the exhibits and finished the transcript of the evidence within 24 hours thereafter and shipped the same by express to Mr. Eugene O'Sullivan; affiant further states that he could have completed and would have completed the transcription of the evidence much sooner than he did if he had had access to the exhibits, and failure to get out said evidence earlier was not due to any fault or neglect on my part and it was all completed within about forty days after being ordered and within about forty-eight days after sentence was imposed. That all of the evidence was shipped, as before stated to Mr. Eugene O'Sullivan, attorney for the appellants, and was shipped to him on Wednesday, March 3, 1943, and that the exhibits in said case were still in Omaha on February 27, 1943, for the hearing before Judge Donohue and affiant does not know the exact day they were returned to Grand Island; that I wrote letters to Mr. Thomas W. Lanigan about the same and signed them and they are the letters attached to the affidavit of Mr. Thomas W. Lanigan and that they are true and correct; affiant further states that he also wrote a letter to Eugene O'Sullivan at the time he sent said evidence and that the same was signed by me and is true and correct.

Dated at Grand Island, Nebraska this 11th day of March, 1943.

O. A. Abbott.

Subscribed in my presence and sworn to before me this 11th day of March, 1943. D. O. Beckmann, Clerk Dist. Court. (Seal.)

[File endorsement omitted.]

[fol. 72] IN UNITED STATES CIRCUIT COURT OF APPEALS

OBJECTION OF APPELLEE TO APPLICATION FOR ADDITIONAL TIME TO PREPARE, SERVE, SETTLE AND FILE BILL OF EXCEPTIONS—Filed March 22, 1943

Comes now The United States of America, Appellee herein, by Emmet L. Murphy, Assistant United States Attorney for the District of Nebraska, and objects to the allowance of the Application for Right to Have a Bill of Exceptions and for Additional Time to Prepare, Serve, Settle and File the Same herein, for the following reasons:

1. That Appellants failed to procure to be settled and to file with the Clerk of the Trial Court a Bill of Exceptions within thirty days after taking the appeal herein on January 18, 1943.

2. That Appellants failed to apply to or secure from the Trial Judge further time within which to procure and settle such Bill of Exceptions within thirty days after the taking of the appeal herein on January 18, 1943.

3. That no sufficient cause is shown herein by Appellants for the failure of Appellants to have complied with the provisions of Rule IX of the rules of this Court, effective May 31, 1942. In this connection Appellee respectfully shows to the Court the following facts:

(a) That through the entire pendency of this action the Appellants were represented by able and experienced counsel, Thomas W. Lanigan and William P. Mullen, both residing in and engaged in the practice of law in the City of Grand Island, Nebraska. That since some time shortly subsequent to January 18, 1943, said Appellants have also been represented by Eugene D. O'Sullivan, an experienced and capable attorney residing in and engaged in the practice of law in the city of Omaha, Nebraska. That both Appellants were and ever since January 15, 1943, have been at liberty under bond. That Appellant, Lorraine Mortensen, prior to and ever since the trial of this cause, has resided in and been present in the said city of Grand Island, Nebraska, or at times, in the city of Omaha, Nebraska, and that both of said Appellants and all of their attorneys have been free at all times to consult together, and to take any and all action [fol. 73] necessary or desired in connection with any appeal of this cause.

(b) That as shown by Exhibit 3, attached to said Application of Appellants filed herein, Attorneys Thomas W. Lanigan and William P. Mullen were advised by the Trial Judge on January 22, 1943, three days after the taking of the appeal herein, of the Rules of Procedure, and that any delay thereafter in fixing a time and place for the hearing, provided for in Rule VII of said Rules of Procedure, was solely the result of the failure of Appellants or their said attorneys to advise the Trial Judge as to what date would be convenient for them for such hearing, as requested by the Trial Judge. That under date of February 1, 1943, by letter addressed to the said Thomas W. Lanigan at Grand Island, Nebraska, by Mae D. Hammond, Secretary to the Trial Judge, a copy of which said letter appears as Exhibit 5 attached to said Appellants' Application filed herein, and which letter was written under direction of the Trial Judge, and was received by said Attorney Thomas W. Lanigan some 15 days prior to the expiration of said thirty-day period, the attention of said attorney for Appellants was specifically directed to the said Rules of Procedure and particularly to Rule VII and IX thereof, and to the particular place in the United States Code Annotated, where said rules are found.

(c) That as shown by Exhibit 1 attached to Appellants' Application filed herein, counsel for Appellants was advised by the court reporter, O. A. Abbott, on January 25, 1943, and long before the expiration of said period of thirty days, mentioned in said Rule IX, that said reporter was also attending to other business and only assured said attorney for Appellants of his ability to prepare a transcript of the evidence within sixty days thereafter, and that Appellants and their counsel were thereby placed upon notice within seven days after the taking of the appeal herein that said transcript of the evidence would not be prepared by the said reporter within said period of thirty days after the taking of said appeal. In this connection Appellee further shows to the Court that the trial of this cause consumed only approximately 1½ days, and by the exercise of ordinary diligence said transcript of the evidence could easily [fol. 74] have been written up and Bill of Exceptions presented herein, all within said period of thirty days after the taking of the appeal, and in any event, by the exercise of any diligence, the question of whether or not additional

time might be necessary and might be granted, could easily have been presented to the Trial Judge all within said thirty-day period. In this connection Appellee further shows to the Court that as disclosed by the Affidavit of said O. A. Abbott, attached to said Application of Appellants filed herein, the failure of Appellants to comply with the provisions of said Rule IX was not in any manner the result of any lack of funds, nor the lack of any financial ability of Appellants to secure and present a Bill of Exceptions.

(d) That as shown by Exhibit 1 attached hereto, the exhibits offered and received at the trial of this cause were at all times available to Appellants and their attorneys, for use in preparing such Bill of Exceptions, and that failure to prepare and present said Bill of Exceptions was in nowise the result of any inability on the part of Appellants or their attorneys, or said court reporter, to have secured said exhibits at any time, upon the exercise of ordinary diligence.

Wherefore, Appellee, The United States of America, respectfully prays that the said Application of Appellants filed herein for right to have a Bill of Exceptions, and for additional time to prepare, serve, settle and file the same, be denied.

The United States of America, Appellee. By Emmet L. Murphy, Assistant United States Attorney for the District of Nebraska.

EXHIBIT 1.

(Affidavit of Mary A. Mullen, Clerk, U. S. District Court)

UNITED STATES OF AMERICA,
State of Nebraska,
Douglas County, ss:

MARY A. MULLEN, being first duly sworn on oath, deposes and says that she is the duly appointed, qualified and acting [fol. 75] Clerk of the United States District Court for the District of Nebraska, and was such Officer during the months of January, February and March, 1943, and for some time prior thereto.

That the exhibits offered and received in evidence at the trial of this cause were left and retained with the files of this Court in this cause. That upon the filing of the Notice of Appeal herein, it was necessary that said files be sent by the Deputy Clerk of the United States District Court at Grand Island, Nebraska, to the office of Affiant at Omaha, Nebraska, and to be retained in said office at Omaha, Nebraska, a portion of the time for the preparation of a transcript on appeal herein, and that said files, including said exhibits, were mailed to Omaha on January 20, 1943 and were thereupon retained in said Omaha office until January 27, 1943, when they were returned to said Grand Island office. That during said period of January 20 to January 27, 1943, said exhibits were available to Appellants or their attorneys and would have been furnished to said attorneys for Appellants upon any request therefor, either oral or written. That said exhibits were with said files in the office of the Deputy Clerk at Grand Island, for the period of January 27 to February 4, 1943, and during said period were readily available at Grand Island to attorneys for Appellants, whose office in Grand Island is located in a building just across the street from the Post Office, wherein the Deputy Clerk's office is located. That on February 4, 1943, said files, including said exhibits, were mailed to the Omaha office and were retained in the Omaha office until February 12, 1943, when they were returned to the Grand Island office, and said files and exhibits remained thereafter in the said Grand Island office to and until February 25, 1943. That during all of said period said exhibits were readily available to Appellants or their attorneys, or said court reporter, upon any request, either oral or written, and that Affiant received no request from Appellants or their attorneys, or said court reporter, for said exhibits during any of the period of time hereinabove in this Affidavit mentioned.

Further Affiant sayeth not.

Mary A. Mullen.

[fol. 76] Subscribed in my presence and sworn to before me this 19th day of March, 1943. Claire Henderson, Notary Public. (Notarial Seal.)

[File endorsement omitted.]

[fol. 77] In United States Circuit Court of Appeals

Order Denying Application of Appellants for Right to Have Bill of Exceptions and for Additional Time to Prepare, Serve and Settle Same, etc.—March 24, 1943

This matter comes before the Court upon an application "for right to have a bill of exceptions and for additional time to prepare, serve, settle and file same," upon the attached affidavits of Thomas W. Lanigan and O. A. Abbott with exhibits attached to the affidavit of Mr. Lanigan, and upon the objection to such application of appellants (filed by appellee). Appellants were represented in oral argument by Mr. Eugene D. O'Sullivan and appellee by Mr. Emmet L. Murphy, Assistant United States Attorney, and the Court being advised,

It is Ordered that said application be and is hereby denied.

March 24, 1943.

[fol. 78] In United States Circuit Court of Appeals

Order of Submission—September 8, 1943

This cause having been called for hearing in its regular order, argument was commenced by Mr. Eugene D. O'Sullivan for appellants, continued by Mr. Emmet L. Murphy, Assistant United States Attorney, for appellee, and concluded by Mr. Eugene D. O'Sullivan for appellants.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

[fol. 79] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

No. 12,531

HANS PETE MORTENSEN and LORRAINE MORTENSEN, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for the District of Nebraska

Mr. Eugene D. O'Sullivan (Mr. Thomas W. Lanigan and Mr. William P. Mullen with him on the brief) for Appellants.

Mr. Emmet L. Murphy, Assistant United States Attorney, (Mr. Joseph T. Votava, United States Attorney, Mr. Fred G. Hawxby and Mr. William H. Meier, Assistant United States Attorneys, with him on the brief) for Appellee.

Before Woodrough, Thomas and Johnsen, Circuit Judges

OPINION—November 23, 1943

JOHNSEN, Circuit Judge, delivered the opinion of the Court.

Appellants were convicted under the White Slave Traffic Act, 36 Stat. 825, 18 U. S. C. A. § 397 et seq., for transporting two girls from Salt Lake City, Utah, to Grand Island, Nebraska, for the purpose of prostitution and debauchery. [fol. 80] They contend that the transportation could not possibly constitute a violation of the Act, because it was merely part of "a circle vacation trip", made from Grand Island, Nebraska, to Yellowstone National Park and Salt Lake City, Utah, and return. They say—to quote the language of their brief—that "the transportation which took place was not transportation in interstate commerce within the intent or meaning of the law, i.e. transportation from a point in one state to a point in another state, but was a transportation from Grand Island, Nebraska, to Grand Island, Nebraska, and the touring through other states on the circle vacation trip was a mere incident to the through transporta-

tion and not transportation from one state to another—the transportation denounced by the law."

Appellants are mistaken as to the proper construction of the White Slave Traffic Act and its object. The Act is entitled "An act to further regulate interstate and foreign commerce by prohibiting the transportation therein for immoral purposes of women and girls, and for other purposes." Its first section, 18 U. S. C. A. § 397, defines "interstate commerce" for purposes of the Act as "transportation from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia." Its second section, 18 U. S. C. A. § 398, provides that "Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, * * * any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, * * * shall be deemed guilty of a felony," etc. This section of the Act plainly was intended to prohibit anyone from bringing a woman or girl across any state line, or of having her so brought, for the purpose of prostitution, etc.—which the jury has found was appellants' intent here in returning the girls to Nebraska. Congress has made no distinction in the Act, such as appellants would have us draw, between the [fol. 81] crossing of a state line with an immoral purpose as a matter of a migrant destination and the crossing of a state line with such a purpose as part of some circle or return trip.[1] The statute entirely closes the doors of interstate commerce to any and all such transportation.

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[1] The evidence to show the claimed circular trip in the present case is not properly before us, because appellants failed to have a bill of exceptions settled in the district court within the necessary time, and their application for an extension subsequently made to this court was denied by another division of judges of the court. In view of the earnest contention made here that, if the evidence had been permitted to be produced in this court, it would show that appellants were not guilty of a violation of the White Slave Traffic Act, as a matter of law, because of the circular vacation trip involved, we allowed counsel for appellants to leave with us a purported transcript of the evidence, but without any filing thereof, in order that we might assure ourselves that no fundamental injustice had been done by

The return of the girls in the present case by automobile from Salt Lake City, Utah, to Grand Island, Nebraska, was therefore inarguably transportation in interstate commerce as defined in section 1 of the Act. With equal certainty, their return across intervening state lines, with the intent to have them re-enter the house of prostitution operated by appellants at Grand Island, Nebraska, was a transporting in interstate commerce "for the purpose of prostitution or debauchery", within the meaning of section 2 of the Act.

The reported decisions confirm this construction of the Act.[2] In *Burgess* v. *United States*, App. D. C., 294 F. 1002, [fol. 82] a conviction was upheld, where the defendant, who already had a wife, took a woman from Washington, D. C., to Alexandria, Virginia, in order to marry her, and re-

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the previous denial of an extension, and that we would not, because of the absence of a bill of exceptions, be affirming a conviction which was not properly an offense under the Act. Having reached the conclusion, as indicated in the opinion, that, under the statute, there is no possible merit in appellants' contention that the return portion of "a circular vacation trip", by which the girls were intended to be returned to appellants' house of prostitution in Grand Island, Nebraska, is not a violation of the Act, it is obvious that no different result would have been reached if a bill of exceptions had been before us, showing all the facts, and that no injustice could possibly therefore have been done appellants by the previous denial of their application for an extension. The clerk will accordingly be directed to return to appellants the tendered transcript of testimony, without any filing thereof.

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[2] We have not previously had occasion to consider the question here involved in relation to the White Slave Traffic Act, but we have analogously held, under a similar definition of interstate commerce in the National Motor Vehicle Theft Act, 18 U. S. C. A. § 408, in *Hughes* v. *United States*, 8 Cir., 4 F. 2d 387, certiorari denied 268 U. S. 692, 45 S. Ct. 511, 69 L. Ed. 1160, that the taking of a stolen automobile on a circular trip from Cloud Chief, Oklahoma, to Safford, Arizona, and back again was a transportation in interstate commerce "from" one state "to" another.

turned after the ceremony to the District of Columbia, where they cohabited. In *Corbett* v. *United States*, 9 Cir., 299 F. 27, the defendant was convicted of causing a woman to be transported for immoral purposes from Spokane, Washington, to Boise, Idaho, where the transportation was merely a return by the woman from a visit made to some of her children, who were ill in Spokane. Defendant and the woman had been illicitly cohabiting in Boise before the trip was made; it was intended that the woman should simply make a visit to Spokane and should return; defendant paid the expenses of the trip; and, after the woman's return to Boise, the parties resumed their cohabitation. The situation is epitomized in the second syllabus point of the case as follows: "That defendant paid for the transportation of a woman from the place they then were into another state, where she went alone, and return, with the intention that she should return, does not prevent the return transportation, if with the requisite intent, from being a violation of White Slave Traffic Act." In *United States* v. *Oriolo*, D. C. E. D. Pa., 49 F. Supp. 226, the defendant had taken a woman, who was working for him as a prostitute in Philadelphia, Pa., from that city to Atlantic City, New Jersey, for a day's outing, with the intention that she should resume her prostitution on their return to Philadelphia. He was indicted under the Act for transporting the woman back from Atlantic City to Philadelphia. He contended, as do appellants here, that the whole trip was a mere "unitary circular journey", and that it was therefore not a transportation from one state to another within the meaning and intent of the Act. The court held that the return trip from Atlantic City to Philadelphia was clearly transportation that was prohibited by the terms of the statute and that the defendant therefore was guilty of a violation of the Act.

[fol. 83] As opposed to these decisions, we have been able to find only one case, *United States* v. *Wilson*, D. C. E. D. Tenn., 266 F. 712, and it is on this case that appellants place their reliance. There, the transportation of a woman, for immoral purposes, from Nashville, Tennessee, through a part of Alabama, to Chattanooga, Tennessee, was held not to be a violation of the Act, on the ground that the passage through Alabama was "a mere incident of the through transportation" from one point in Tennessee to another in the same state. Factual distinctions between that case and

the case at bar could perhaps be drawn, but we prefer rather to express our disapprobation of the interpretation there made of interstate transportation under the White Slave Traffic Act.[3] We agree with the criticism of the Wilson case voiced in *United States* v. *Winkler*, D. C. W. D. Tex., 299 F. 832, 834, that "it seems to stand alone, without authority to sustain it, and out of harmony with all other cases upon the same subject."

The construction here made of the Act automatically disposes of other of appellants' assignments of error without the necessity of further discussion. Some objections have been made to the indictment which also need not be discussed, since they are sufficiently answered by other decisions. See *Pines* v. *United States*, 8 Cir., 123 F. 2d 825; *Ackley* v. *United States*, 8 Cir., 200 F. 217; *Troutman* v. *United States*, 10 Cir., 100 F. 2d 628; *Hughes* v. *United States*, 6 Cir., 114 F. 2d 285, 288; *Connors* v. *United States*, 158 U. S. 408, 15 S. Ct. 951, 39 L. Ed. 1033; also 18 U. S. C. A. § 556.

The judgment as to each appellant is affirmed.

[fol. 84] DISSENTING OPINION

WOODROUGH, Circuit Judge, dissenting:

I have been unable to concur in affirming the conviction of these appellants because I am not convinced that their act of taking the named young women in their automobile on the vacation trip through the mountains and back was criminal.

Recognizing, as the record requires, that the business of appellants' house in Grand Island, Nebraska, was carrying on prostitution, I think there is a fallacy in spelling a crime out of the act of taking the inmates away from their place of prostitution and stopping it for the two weeks period of vacation travel. In the Mann Act Congress has exercised its powers in the field of interstate commerce to

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[3] As we have indicated, under the definition of interstate commerce contained in the White Slave Traffic Act and the National Motor Vehicle Theft Act (see footnote 2, supra,) the crossing of any state line is transportation "from" one state "to" another.

prevent transportations in interstate commerce in furtherance of sexual immorality. I do not think its provisions contemplate, or can be extended to, transportations that are not in furtherance and have nothing to do with sexual immorality except to interrupt and stop its practice for a period. The law has been on the books a long time and none of the cases cited appears to me to lend support to the affirmance. *Wilson* v. *United States*, 266 F. 712, is to the contrary, so far as it is in point. But there the transportation may have been in furtherance of the immoral practices, and I do not rely on it. It seems obvious to me that aiding prostitutes to travel away from their foul environment for even a short vacation period is not evil conduct and that it was not the intent of the Act to make it criminal. Splitting the round trip up into two transportations, innocent while outward bound but criminal on the homeward lap, seems to me a mental operation that reflects ingenuity of the prosecutor rather than fair application of the Act to what the appellants did.

I can discern only one intent of all the parties to the trip, and that was to take a vacation. They went away with that intent and held to it till they got back. The penitentiary sentences imposed upon these appellants for doing that and nothing more seem to me erroneous.

[fol. 85] In United States Circuit Court of Appeals, Eighth Circuit, November Term, 1943

No. 12531

Hans Pete Mortensen and Lorraine Mortensen, Appellants,

vs.

United States of America

Appeal from the District Court of the United States for the District of Nebraska

Judgment—Filed November 23, 1943

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Nebraska, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgments and sentences of

the said District Court, in this cause, be, and the same are hereby, affirmed without costs to either party in this Court.

And it is further ordered that the defendants in the Court below, Hans Pete Mortensen and Lorraine Mortensen, do surrender themselves to the custody of the United States Marshal for the District of Nebraska, in execution of the judgments and sentences imposed upon them, and each of them, within thirty days from and after the date of the filing of the mandate of this Court in the said District Court.

November 23, 1943.

[fol. 86] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 87] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

[Title omitted]

ORDER RECALLING AND STAYING MANDATE—Filed December 20, 1943

This matter comes before the Court on the application of appellants to recall the mandate of this Court pending their application for certiorari from the Supreme Court of the United States and the court being advised,

It is Ordered that the mandate heretofore issued in this case be recalled and held until January 2, 1944, at which time it shall be reissued to the District Court unless before that date there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

December 20, 1943.

[fol. 87½] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 88] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 31, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: Enter Eugene D. O'Sullivan, File No. 48,052, U. S. Circuit Court of Appeals, Eighth Circuit, Term No. 559. Hans Pete Mortensen and Lorraine Mortensen, Petitioners, vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed December 27, 1943. Term No. 559, O. T. 1943.